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<td>1. Roll Call</td>
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<td>b. BOT 3/12/19 Regular Meeting Minutes</td>
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<td>e. Modification of Premises/Revocable License Agreement – Phat Thai</td>
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<td>f. Liquor License Renewal – Sopris Liquor &amp; Wine</td>
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<td>g. Modification of Premises/Revocable License Agreement – Black Nugget</td>
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<td>h. Ratification of Settlement Agreement &amp; Release – Tumbleweed, LLC</td>
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<td>i. Rocky Mountain Landscaping Highway 133 Irrigation Contract</td>
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<td>j. Bike Park Maintenance Contract</td>
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<td>6. Proclamation – Architecture Month</td>
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<td>7. Special Event Liquor License – Veterans Expedition</td>
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<td>8. Special Event Liquor License – Festival las Americas</td>
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**DESIRED OUTCOME**

- ATTACHMENT A
- ATTACHMENT B
- ATTACHMENT C
- ATTACHMENT D
- ATTACHMENT E
- ATTACHMENT F
- ATTACHMENT G
- ATTACHMENT H
- ATTACHMENT I
- ATTACHMENT J
- BOT Action Desired
- ATTACHMENT K
- ATTACHMENT L
- BOT Action Desired
- ATTACHMENT M
- BOT Action Desired
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<td>Ordinance No. 8, Series of 2019 – Regarding Payment of Charges for the Municipal Code</td>
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<td>Pickleball Memorandum of Understanding</td>
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* Please note: times are approximate
Board of Trustees Agenda Memorandum

Item No: Attachment A

Meeting Date: 04.09.2019

TITLE: Accounts Payable

SUBMITTING DEPARTMENT: Finance

ATTACHMENTS: Accounts Payable for 04.09.2019

DISCUSSION: The accounts payable include $25,100.00 to Mitchell and Company for 15 computer purchases. These were all 2019 scheduled replacements in various department. Spring is finally here and tree pruning and tree removal is being done with payments of $11,481.00 for tree pruning to Aspen Tree Service and $4,850.00 for tree removal to High Rise Tree Care. Correlated is being paid a deposit for Spring Cleanup, which happens May 4, of $4,500.00. Recreation is releasing Special Programs Community Requests to various organizations for a total of $13,118.00. Timber Line Electric is being paid $55,003.00 for hardware, wiring and programing for Nettle Creek. $15,500.00 is being paid to Ruedi Water & Power Authority for annual dues and ANS Program. The Gateway house is moving toward completion of the renovations. This AP has $33,989.29 in bills being paid for stucco, insulation, electrical and the general contractor.

The payroll for 3.22.19 was $160,116.81. Tax liability for the town was $9,182.64. Pension and Retirement liability was $10,421.78.

If you have any questions concerning the Accounts Payable, please contact me.

Renae
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75-4500-5310 OFFICE EQUIPMENT RENTAL

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Total 75-4500-5310: 62.87

75-4500-9420 COMPUTER EQUIP/SOFTWARE

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75-4512-3410 UTILITIES

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Total 75-4512-3410: 54.78

77-4500-5320 MERCHANT FEE

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Total 77-4500-5320: 211.04

Grand Totals: 285,337.91
MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
MARCH 12, 2019

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on March 12, 2019, at 6:00 p.m. in the Town Hall meeting room.

STUDENT OF THE MONTH

A Student from Ross Montessori School were in attendance to receive the “Student of the Month” award. The following student were awarded a Certificate of Achievement from Mayor Richardson:

Annelise Bumgarner

ROLL CALL:

The following members were present for roll call:

Mayor
Trustees
Dan Richardson
Erica Sparhawk
Lani Kitching
Heather Henry
Ben Bohmfalk
Luis Yllanes

Absent
Marty Silverstein

Staff Present:

Town Manager
Jay Harrington
Town Clerk
Cathy Derby
Finance Director
Renae Gustine
Town Attorney
Mark Hamilton
Public Works Director
Kevin Schorzman

CONSENT AGENDA

- Accounts Payable totaling $282,218.09
- BOT 2/19/2019 Work Session Minutes
BOT 2/26/2019 Regular Meeting Minutes
Liquor License Renewal – Pour House
Liquor License Renewal – The Beat
Liquor License Renewal – Pop's Liquors
Modification of Premises/Revocable License Agreement – Allegria
Resolution No. 5, Series of 2019 – Senior Housing Grant
Garfield County Intergovernmental Agreement – Mosquito Control
Garfield County Memorandum of Understanding – Senior Programs
Bike/Pedestrian/Trails Commission – Recommendation for Appointment
Carbondale Crystal River Restoration and Weaver Ditch Efficiency Project Grant

Trustee Bohmfalk made a motion to approve the Consent Agenda. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Richardson, Yllanes, Bohmfalk, Henry, Sparhawk, Kitching

PERSONS PRESENT NOT ON THE AGENDA

Anna Cole, Crystal Bridge Dr., stated that she is representing the Roaring Fork School District. They are applying for a grant to fund a Substance Abuse Intervention Specialist position. She asked the Board for a letter of support and stated that in the future they will be asking for a $10,000 match.

Discussion ensued.

The Board asked Jay how much money is in the Marijuana Fund. Jay stated that there was $40,000. The Town gave Roaring Fork High School $30,000 for their mental health counselor, so $10,000 is unallocated. Jay noted that at a previous meeting the Board discussed contributing funding for anti-vaping efforts.

The Board agreed to write a letter of support and they will consider contributing the $10,000 match at their March 19th Special Meeting.

Frosty Merriott, Lakeside Drive, stated he is glad the Town is moving forward on requiring the car wash’s lighting to come into compliance.

Frosty stated that Aspen voters approved the Lift One Development by a small margin. One hundred and seventy housing units are being created, with only three units on site. Usually Aspen mitigates housing at 65%. They made an exception with this project, the housing is being mitigated at 35%. He asked how are we going to get ahead with community housing when this type of thing is happening – it’s a regional issue.
TRUSTEE COMMENTS

Trustee Kitching attended the Garfield County Commissioners work session where they discussed policy planning. Trustee Kitching stated that she attended the Rotary Club meeting; there was a presentation on recycling. She also attended the Garfield Clean Energy Board meeting. They discussed the expansion of charging stations. She stated that the Carbondale Age Friendly Community Initiative is testing RFTA’s transit service. The Carbondale Age Friendly Community Initiative and Senior Matters may merge and form a Senior’s Commission.

Trustee Bohmfalk stated that he attended the Bridges High School Project Citizen presentation. There were presentations on: vaping, the lack of a mental health counselor at Bridges, and the need for an after school program for older students. Trustee Bohmfalk also attended the Bike/Pedestrian Trails Commission meeting. They had a thoughtful discussion on WeCycle.

Mayor Richardson stated that the town had another successful First Friday. The Coventure opening party was well attended. Mayor Richardson gave a State of Carbondale talk to the Carbondale Leads group.

Trustee Yllanes congratulated the Parks and Recreation Commission for receiving a GOCO grant for (new) pool planning.

ATTORNEY’S COMMENTS

The attorney did not have any comments.

SPECIAL EVENT LIQUOR LICENSE – WILDERNESS WORKSHOP

Wilderness Workshop has applied for a Special Event Liquor License for an event to be held at the Third Street Center. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve Wilderness Workshop’s Special Event Liquor License. Trustee Kitching seconded the motion and it passed with:

6 yes votes: Kitching, Bohmfalk, Henry, Sparhawk, Richardson, Yllanes

SPECIAL EVENT LIQUOR LICENSE – BLUE LAKE PRESCHOOL

Blue Lake Preschool has applied for a Special Event Liquor License for their annual fundraiser to be held at the Orchard. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.
Trustee Bohmfalk made a motion to approve Blue Lake Preschool's Special Event Liquor License. Trustee Kitching seconded the motion and it passed with:

6 yes votes: Bohmfalk, Henry, Sparhawk, Richardson, Yllanes, Kitching

SPECIAL EVENT LIQUOR LICENSE – COLORADO ANIMAL RESCUE

Colorado Animal Rescue has applied for a Special Event Liquor License for an event to be held at the 4th Street Plaza. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve Colorado Animal Rescue’s Special Event Liquor License. Trustee Kitching seconded the motion and it passed with:

6 yes votes: Bohmfalk, Henry, Sparhawk, Richardson, Yllanes, Kitching

SPECIAL EVENT LIQUOR LICENSE – 5 POINT FILM FESTIVAL

5 Point Film Festival has applied for Special Event Licenses at the following locations: Steve’s Guitars, Town Hall Parking Lot, Carbondale Recreation Center, and the Launchpad. All fees have been paid and the Police Department has reported no problems with the applicant or the premises.

Trustee Sparhawk made a motion to approve 5 Point Film Festival’s Special Event Liquor Licenses at the locations listed above. Trustee Yllanes seconded the motion and it passed with:

6 yes votes: Henry, Sparhawk, Richardson, Yllanes, Kitching, Bohmfalk

CONTINUED PUBLIC HEARING – RENEWAL OF RETAIL MARIJUANA STORE LICENSE – TUMBLEWEED
Applicant: Tumbleweed Carbondale, LLC
Location: 304 Highway 133

Staff asked the Board to continue the public hearing to renew Tumbleweed’s Retail Marijuana store license to April 9, 2019 due to on-going negotiations.

Trustee Henry made a motion to continue the public hearing to renew Tumbleweed’s Retail Marijuana Store’s license to April 9, 2019. Trustee Kitching seconded the motion and it passed with:

6 yes votes: Sparhawk, Richardson, Yllanes, Kitching, Bohmfalk, Henry

CLEER – REVIEW AND APPROVAL OF THE 2019 ENERGY PLAN

Trustee Sparhawk, who works for CLEER, recused herself and left the meeting.
The Town of Carbondale annually contributes $30,000 to CLEER for energy-reducing projects.

CLEER employee Katharine Rushton presented the 2019 Scope of Services and Work Plan. The scope of services continues to implement the action steps set forth in the Climate & Energy Action Plan while also leveraging and enhancing Carbondale’s membership in Garfield Clean Energy and the programs offered through the county-wide approach.

The 2019 Scope of services include:

- Advance the concept of net zero buildings and districts ($14,000)
- Focus on Carbondale climate-friendly transportation ($7,500)
- Continue the low-income energy efficiency program ($3,000)
- Continue the Sustainability Educational Series ($5,500)

Discussion ensued.

Trustee Henry asked if the low-income energy efficiency program is linked to the net zero district on 2nd Street. Katharine answered that they focus on low-income households town-wide. 2nd Street has a mixture of incomes. However, they will solicit the low-income residents on 2nd Street.

Trustee Yllanes likes the education series and he hope it will address waste reduction.

Mayor Richardson stated he likes that the climate-friendly transportation project is focusing on infrastructure rather than purchases. He believes in beneficial electrification. He asked how can we ween ourselves off of natural gas? Do we create greater incentives for electrification?

Trustee Bohmfalk asked if we keep doing this work will be get to net zero in 2040? Katharine responded that we can’t get there without collaboration; we all need to play our part.

Trustee Bohmfalk stated that we need to focus on the transportation sector soon.

Trustee Bohmfalk doesn’t believe we have the expertise to eliminate the usage of natural gas.

The Board would like CLEER to provide updates throughout the year.
HOLY CROSS RENEWABLE ENERGY PURCHASE PROGRAM DISCUSSION

Kevin explained that Holy Cross Energy has a program whereby customers can purchase renewable electricity sourced from Colorado produced solar, wind and hydro power. Currently Holy Cross supplies the town with approximately 39% of our electricity through renewables. CLEER reviewed the information from Holy Cross and has determined that participation in the program would support the intent of the goal in the Town’s Energy Action Plan to “accelerate use of renewable energy sources, both on-site in Carbondale, and by working with utilities for greater use of renewables.”

There is no long-term commitment required to participate in the program.

Discussion ensued.

Trustee Henry asked if we are doing everything possible to reduce energy consumption. Jay responded that staff has significantly lowered electricity usage at the waste water treatment plant, the largest consumer of electricity of all of the Town’s buildings. When we do upgrades we purchase the most efficient equipment possible. The easy energy-reducing projects have been done. When we look at capital replacements we also consider energy efficiency.

The only way waste water will get to net zero is if Holy Cross puts green on the grid.

Katharine Rushton recommends buying renewable electricity; it’s low risk and you can change your mind next month since you are not signing a contract.

Mayor Richardson proposed taxing ourselves on the natural gas we consume and put the funds in an Electrification Fund. He stated that he is fixated on shifting away from natural gas. The Board did not agree.

Trustee Bohmfalk made a motion to authorize staff to purchase 100% of wind power from Holy Cross on a monthly basis. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Kitching, Bohmfalk, Henry, Sparhawk, Richardson, Yllanes

EXECUTIVE SESSION – LAND ACQUISITION

At 8:05 p.m. Trustee Kitching made a motion to go into an Executive Session to discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest under C.R.S. Section 24-6-402(4)(a). Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Bohmfalk, Henry, Sparhawk, Richardson, Yllanes, Kitching
At 8:27 p.m. Trustee Kitching made a motion to adjourn the Executive Session and return to the regular meeting. Trustee Bohmfalk seconded the motion and it passed with:

6 yes votes: Henry, Sparhawk, Richardson, Yllanes, Kitching, Bohmfalk

ADJOURNMENT

The March 12, 2019, regular meeting adjourned at 8:30 p.m. The next scheduled meeting will be held on March 19, 2019, at 6:00 p.m.

APPROVED AND ACCEPTED

______________________________
Dan Richardson, Mayor

ATTEST:

______________________________
Cathy Derby, Town Clerk
MINUTES
CARBONDALE BOARD OF TRUSTEES
REGULAR MEETING
MARCH 19, 2019

Mayor Dan Richardson called the Board of Trustees Regular Meeting to order on March 19, 2019, at 6:00 p.m. in the Town Hall meeting room.

ROLL CALL:

The following members were present for roll call:

Mayor
Trustees
Dan Richardson
Erica Sparhawk
Lani Kitching
Ben Bohmfalk
Luis Yllanes
Marty Silverstein

Arrived After Roll Call
Heather Henry

Staff Present:

Town Manager
Town Clerk
Finance Director
Town Attorney
Town Attorney
Public Works Director
Planning Director
Planner
Jay Harrington
Cathy Derby
Renae Gustine
Mark Hamilton
Tam Udall
Kevin Schorzman
Janet Buck
John Leybourne

CONSENT AGENDA

• Accounts Payable totaling $82,969.81
• Red Hill Intergovernmental Agreement – Conservation Trust
• FMLD Grant – Sol Energy, LLC - Solar Install Contract Miner’s Park

Trustee Bohmfalk made a motion to approve the Consent Agenda. Trustee Kitching seconded the motion and it passed with:

6 yes votes: Richardson, Yllanes, Bohmfalk, Silverstein, Sparhawk, Kitching
PERSONS PRESENT NOT ON THE AGENDA

There was no one present who wished to address the Board.

TRUSTEE COMMENTS

Trustee Sparhawk stated that the next Colorado Communities for Climate Action meeting is scheduled for April 5th from 9:00 am – 11:00 am in Basalt. They have asked her to submit an op ed piece supporting the bills moving through the legislature. She asked the Board for permission to do so, and said she would send the Board the article to review before submitting it. The Board agreed.

Trustee Bohmfalk attended the first Coventure Board meeting. They discussed their upcoming events which include: a speaker series, incubation opportunities, and Pitch Night on April 12th which is open to the public.

Trustee Silverstein said Atlantic Magazine had a good article on recycling and towns who have stopped recycling due to the high cost.

Trustee Silverstein thanked Trustee Kitching for attending the Garfield County Commissioner’s meeting where they considered a land use change for two new storage facilities.

Trustee Kitching stated that she attended the Ruedi Water and Power Authority retreat. They discussed three initiatives: the invasive species program, bridging the disconnect between development and water resources, and they don’t want to lose sight of the 2016 Water Shed Plan.

Trustee Kitching thanked the Garfield County Commissioners for supporting the CORE Act.

Mayor Richardson attended the RFTA Board meeting. RFTA staff is working on Destination 2040 projects. Destination 2040 now has a dedicated website. They also discussed the construction management team. The team’s role is to assist in projects where RFTA is a significant stakeholder.

Mayor Richardson attended the Building a Better Colorado meeting. They brainstormed on what changes, if any, can be made to TABOR. The Board will get invited to a future meeting.

ATTORNEY’S COMMENTS

The attorney did not have any comments.
SPECIAL EVENT LIQUOR LICENSE – CARBONDALE COMMUNITY ACCESS RADIO - KDNK

KDNK has applied for a Special Event Liquor License for Dandelion Day. All fees have been paid and the police department has reported no problems with the applicant or the premises.

Trustee Bohmfalk made a motion to approve KDNK’s Special Event Liquor License. Trustee Silverstein seconded the motion and it passed with:

6 yes votes: Kitching, Bohmfalk, Silverstein, Sparhawk, Richardson, Yllanes

SPECIAL EVENT LIQUOR LICENSE – COVENTURE

Coventure has applied for a Special Event Liquor License for an event to be held at the Third Street Center. All fees have been paid and the police department has reported no problems with the applicant or the premises.

Trustee Bohmfalk made a motion to approve Coventure’s Special Event Liquor License. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Bohmfalk, Silverstein, Sparhawk, Richardson, Yllanes, Kitching

PUBLIC HEARING – ORDINANCE NO. 4, SERIES OF 2019 – AMENDING THE UNIFIED DEVELOPMENT CODE

Applicant: Town of Carbondale

Janet stated that this is a public hearing for the purpose of considering amendments to the Unified Development Code (UDC).

The UDC process started in July of 2013 with the intent to re-write the subdivision and zoning code so that it was in harmony with the 2013 Comprehensive Plan. It was adopted in March of 2016.

Overall, the UDC has provided a clear development code. It is well written and to date, it has provided guidance during review of land use applications.

Since the adoption, staff and the Planning and Zoning Commission have been working on amendments to the UDC. Comments were solicited from town staff, advisory boards and commissions in 2017. Planning and building staff requested a number of revisions over the last year. Also, Clarion reviewed development standards as they relate to impervious coverage, lot size and common open space. The Clarion findings were presented to the Planning & Zoning Commission in December of 2018. Members of the
public were present at that meeting and provided feedback on the amendments. The amendments were incorporated into the redlines.

Janet recommends approval of Ordinance No. 4, Series of 2019 amending the Unified Development Code.

Discussion ensued.

Trustee Bohmfalk asked if the lighting temperatures and sidewalk widths are consistent; they are.

Trustee Yllanes asked how enforcement will work for buildings with non-compliant lighting like Carbondale Middle School. Jay responded that the school district doesn’t have to adhere to the UDC.

Mayor Richardson opened the meeting to public comment. There was no one present who wished to address the Board so the Mayor closed the public hearing.

Trustee Bohmfalk made a motion to approve Ordinance No. 4, Series of 2019 – amending the Unified Development Code with the following findings:

**Findings:**

1. The proposed amendments will promote the public health, safety, and general welfare;

2. The proposed amendments are consistent with the Comprehensive Plan and the stated purposes of this Unified Development Code as it provides improvements to the UDC; and

3. The proposed amendments are desirable because of changing conditions, specifically, administration of the UDC over the last 18 months indicate that the amendments are desirable to improve the UDC.

Trustee Bohmfalk stated that the fact that members of the public aren’t at the meeting is a testament that the land use code is working.

**PUBLIC HEARING – ORDINANCE NO. 5, SERIES OF 2019 – AMENDING THE SIGN CODE**

Applicant: Town of Carbondale

John Leybourne explained that the town attorney has proposed amending Section 5.9 Signs in the Unified Development Code due to legal proceedings that the Town has been involved in. The changes include placing a timeframe for approval/disapproval of a sign permit. Also, recommended is a timeframe that a business may display signage
before the business becomes operational. A definition for “Operational” has also been added.

Mayor Richardson opened the meeting to public comment. There was no one present who wished to address the Board so the Mayor closed the public hearing.

Trustee Yllanes made a motion to approve Ordinance No. 5, Series of 2019 amending the Sign Code in the Unified Development Code. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Sparhawk, Bohmfalk, Kitching, Richardson, Silverstein, Yllanes

WASTE HAULING CONTRACT AWARD

Jeb Hensley of Waste Management and Doug Goldsmith of Mountain Waste Recycling were in attendance.

Kevin stated that the Town received two waste hauling proposals. Both proposals were excellent and it was not an easy decision. Kevin is recommending that the Town select Mountain Waste for all three contracts.

Discussion ensued.

The Board agreed that they do not want residents to be fined for violations and staff and the trash company should concentrate on educating the public.

Trustee Kitching stated that this is a big undertaking. She asked if staff is confident that they can manage it. Jay stated that’s why we are building in administrative fees. The transition from June – September is the big piece. It’s expected that we are going to get push back from people who don’t have trash service now. Originally there will be 1,500 accounts but that will increase once the homeowner’s associations’ contracts expire.

Trustee Yllanes asked how staff is going to alert the Latino community to the change. Kevin stated that all materials will be printed in both English and Spanish. Staff will contact all of the newspapers. Information will be placed on the variable sign. And staff will use the Town’s Communication Plan.

Trustee Silverstein stated that he was skeptical when the Board started this process. He said Trustee Bohmfalk ensured him that moving to a single hauler would be more affordable and it is. It is a win/win situation.

Trustee Bohmfalk asked about the container exchange. Kevin explained that within the first sixty days a resident may change the size of their container one time without receiving a surcharge.
Trustee Silverstein asked what happens when a resident has more trash than the size of their container. Kevin answered they would need to call the provider not the town.

Mayor Richardson asked the two trash companies how many citations were issued in 2018. They both responded not many. Mayor Richardson stated that he would like to see a baseline of violations.

The Board asked what recyclables are included. Kevin stated that it’s based on what the recycling facilities will accept. Trustee Silverstein asked if the contract is flexible enough to allow for changes in what is accepted for recycling; it is.

Trustee Henry arrived at the meeting.

Kevin stated that the Administrative Fees will be charged from September – December. In December staff and the Board will have the opportunity to set the fees for 2020. Yard waste pick up won’t start until 2020. There is a cushion built into the administrative fees because the yard waste pick up is factored in the fees.

The Board asked Kevin what led to his recommendation. Kevin responded price, and the appeal for the one day a week pick up.

Mayor Richardson stated that he prefers the Board choose Waste Management. Trustee Henry stated that she prefers Mountain Waste since 70% of the community already uses them. Trustees Kitching, Bohmfalk, Sparhawk, Yllanes and Silverstein deferred to staff making the decision.

Mayor Richardson asked the Board if they agree to staff’s recommendation for Contracts B and C; they did.

Mayor Richardson opened the meeting to public comment.

Jeb Hensley thanks the Board for the opportunity to bid the project. He felt that the price point was a big deal. Waste Management’s prices are skewed because they included the price of providing small containers. Safety is the biggest selling point of their company.

Dough Smith stated that the lack of citizens present is a testament to staff’s ability to distribute information to the public. Doug said “we are your neighbor, full-service local company.”

Trustee Bohmfalk made a motion to award the Waste Hauling Contracts to Mountain Waste Recycling. Trustee Silverstein seconded the motion and it passed with:

7 yes votes: Bohmfalk, Kitching, Richardson, Henry, Silverstein, Yllanes, Sparhawk
ORDINANCE NO. 6, SERIES OF 2019 – AMENDING CHAPTER 7, ARTICLE 3, OF THE MUNICIPAL CODE RE: GARBAGE AND REFUSE

Kevin explained that the ordinance will align the Municipal Code with the contract. The single waste hauler change only applies to single and multi-residences with seven units or less. It also allows the Board to establish fees, and allows the Town to collect on past-due bills.

Trustee Bohmfalk left the meeting.

Trustee Kitching made a motion to approve Ordinance No. 6, Series of 2019 – amending Chapter 7, Article 3, of the Municipal Code regarding Garbage and Refuse. Trustee Sparhawk seconded the motion and it passed with:

6 yes votes: Kitching, Richardson, Henry, Silverstein, Yllanes, Sparhawk

ROARING FORK SCHOOL PREVENTION SPECIALIST REQUEST FOR FUNDING

Anna Cole, representing the Roaring Fork School District, was present at the meeting.

Anna came to the March 12th Board meeting and asked the Trustees for a letter of support for a grant they are writing to fund a prevention specialist for Bridges HS, Carbondale Middle School and Riverview. At the meeting she explained that due to a staffing shortage, the grant was written toward the end of the grant deadline. They wanted to ask the Town for a $10,000 match but ran out of time.

At the March 12th meeting Jay informed the Board that the Marijuana Fund originally contained $40,000 but they gave $30,000 to the Roaring Fork High School Mental Health Counselor. The Board agreed to consider contributing a $10,000 match at the March 19th meeting.

Discussion ensued.

Jay noted that the police chief feels that the RF School District doesn’t financially participate at an appropriate level. They only contribute $17,300 towards the student resource officer.

Jay stated that when the school district was proposing to build Riverview a previous Board objected to its location. He suggested that the $10,000 should only be used for Bridges HS and Carbondale Middle School.

Trustee Sparhawk stated that she supports giving them $10,000 because the suppression program team are doing amazing things. They are tackling our goal to eliminate student vaping.
Mayor Richardson stated that it is unusual for the Board to consider funding requests outside of the budget cycle. However, the money is there for a reason and we need to help the kids. It’s a good use of leveraging funds.

Trustee Sparhawk suggested adding a condition to the contribution that the money can only be used for Bridges HS, Carbondale Middle School and programs that serve Carbondale residents.

Trustee Sparhawk made a motion approving a $10,000 contribution to fund a Roaring Fork School Prevention Specialist with the condition that the money may only be used for a prevention specialist at Bridges HS and Carbondale Middle School, and for prevention programs provided to Carbondale residents. Trustee Yllanes seconded the motion and it passed with:

6 yes votes: Kitching, Henry, Silverstein, Sparhawk, Yllanes, Richardson

ADJOURNMENT

The March 19, 2019, regular meeting adjourned at 8:35 p.m. The next regular meeting will be held on April 9, 2019, at 6:00 p.m.

APPROVED AND ACCEPTED

Dan Richardson, Mayor

ATTEST:

Cathy Derby, Town Clerk
Consulting and Service Agreement

This Consulting and Service Agreement (the "Agreement") is made and entered into this March 18th 2019 between CLEER: Clean Energy Economy for the Region (the "CONSULTANT") and Town of Carbondale (the "TOWN").

RECITALS

WHEREAS, the Town has dedicated funding to work towards achieving the goals and targets that were adopted in the 2017 Climate and Energy Action Plan.

WHEREAS, the Town would like assistance from the Consultant to meet the goals and objectives identified in the attached Scope of Work.

WHEREAS, Consultant has agreed to perform these Consulting Services and other related activities as directed by the Town.

NOW, THEREFORE, the parties hereby agree as follows:

1. Consultant's Services. Consultant shall be available and shall provide to the Town professional consulting services as described in the attached Scope of Work.

2. Consideration. In consideration for the Consulting Services to be performed by Consultant as described in the attached Scope of Work, the Town will pay Consultant at the hourly rate of $95. Consultant shall submit written reports describing the time spent performing Consulting Services, itemizing in reasonable detail the dates on which services were performed, the number of hours spent on such dates and a brief description of the services rendered. The Town shall pay Consultant the amounts due, pursuant to submitted reports, within 30 days after Consultant provides such reports to the Town.

3. Relationship. Consultant is independent from the Town and is in direct control of its direction and timing of actions. This Agreement does not establish a joint venture, agency or partnership between the parties, nor does it create an employer-employee relationship. Consultant does not have authority to act for or bind the Town in any way, or to represent that the Town is in any way responsible for the acts of Consultant. Consultant is responsible for its record keeping, tax liabilities, and insurance coverage. The considerations set forth in Section 2 shall be the sole considerations due Consultant for the Consulting Services. Consultant will not represent or hold itself out as an employee of the Town.

4. Term. This Agreement shall commence upon signature of this document and shall continue until agreement is terminated. Either party may terminate this Agreement upon thirty (30) days written notice.
Consulting and Service Agreement

5. Notices. Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first class mail of the United States, properly addressed to the appropriate party at the address set forth below:

1. Notices to Consultant: CLEER: Clean Energy Economy for the Region, P.O. Box 428, Carbondale, Colorado 81623

2. Notices to the Town: Town Manager, 511 Colorado Ave., Carbondale, CO 81623

6. Miscellaneous.

6.1 Entire Agreement and Amendments. This Agreement constitutes the entire agreement of the parties with regard to the subject matter hereof, and replaces and supersedes all other agreements or understandings, whether written or oral. No amendment or extension of the Agreement shall be binding unless in writing and signed by both parties.

6.2 Binding Effect, Assignment. This Agreement shall be binding upon and shall inure to the benefit of Consultant and the Town. Nothing in this Agreement shall be construed to permit the assignment by Consultant of any of its rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of the Town.

6.3 Governing Law, Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to principles of conflict of laws. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision.

6.4 Indemnity and Insurance. Consultant shall hold harmless and indemnify the Town from and against any damages awarded against the Town, or incurred by the Town in defense of any claim (including reasonable attorneys' fees, costs or expert witness fees), related to the negligent or intentional wrongful conduct of Consultant or its officers, employees and agents. Consultant will also obtain and maintain statutory workers' compensation insurance coverage and shall maintain general liability insurance coverage with at least minimum limits as follows: General Liability - $1,000,000 per occurrence/$2,000,000 Aggregate; Workers Compensation — Colorado State Statutory Limits. The Town and its employees shall be named as additional insureds under the general liability policy. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Consultant. Consultant shall be solely responsible for any deductible losses under each of the policies required above. Certificates of Insurance shall be completed by the Consultant's insurer or insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto. The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other
Consulting and Service Agreement

rights immunities and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its officers or employees.

6.5 Publicity. Neither Party will make or issue, or cause to be made or issued, any announcement or statement regarding activities under this Agreement for dissemination to the general public or any third party without the prior written consent of the other Party.

6.6 Counterparts. This Agreement may be executed and delivered (including by facsimile or electronic transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

6.7 Work by Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Consultant does not and will not knowingly employ or contract with an illegal alien.

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

Town of Carbondale
By:

____________________________
Title:
March 18th, 2019

CLEER: Clean Energy Economy for the Region
By: Alice Laird

____________________________
Title: Executive Director
March 18th, 2019
To: Mayor Richardson and Carbondale Trustees

Through: Jay Harrington, Carbondale Town Manager

From: Katharine Rushton, CLEER
krushton@cleanenergyeconomy.net

Re: Proposed Scope of Services and Work Plan 2019

Date: March 5, 2019

Background

The 2017 Carbondale Climate & Energy Action Plan (CCEAP) set ambitious clean energy targets for both the Town of Carbondale facilities and the wider community, and outlines specific action steps to achieve the goals.

Building on the work of prior CLEER/Carbondale contracts, the following proposed scope of services continues to implement the action steps set forth in the Climate & Energy Action Plan while also leveraging and enhancing Carbondale’s membership in Garfield Clean Energy and the programs offered through the countywide approach.

CLEER has created this work plan based on comments received from Mayor Richardson and the Trustees, input from Town Manager Jay Harrington and the strategies and tactics listed in the Carbondale Climate & Energy Action Plan.

2019 Scope of Services and Work Plan

The 2019 Scope of Services focuses on four key areas:

➢ Advance Concept of Net Zero Buildings and Districts
➢ Carbondale Climate-Friendly Transportation
➢ Low-income Energy Efficiency Program
➢ Sustainability Educational Series
Advance Concept of Net Zero Buildings and Districts

From Carbondale Climate & Energy Action Plan: Energy Use in Buildings > Goals: Continue to improve energy efficiency in existing government, commercial and residential buildings. Work for energy positive and high-performance buildings. > Vision for 2050: All buildings have net-zero emission

Carbondale Facilities: Pathway to Net Zero Carbon Emissions

From Carbondale Climate & Energy Action Plan: Strategy 1: Lead by example. Improve energy efficiency of town buildings

In 2017, CLEER staff completed a benchmarking project on all town facilities that established a baseline of energy use by fuel type for each building. The 2019 work plan will leverage this work by identifying strategies and technologies to reduce carbon emissions at each site as well as potential financing and funding sources that will allow the Town to keep making progress towards the net zero carbon emissions goal.

Opportunities to explore include:

- Further efficiency measures
- Fuel switching
- Beneficial electrification
- Air source heat pump technology
- Further renewable energy procurement

Net Zero for New Construction

From Carbondale Climate & Energy Action Plan: Strategy 4: Build it right from the start. All new buildings should be highly efficient

Lessons from 2018’s Net Zero Energy District work demonstrated that Net Zero targets are easier to achieve when included in the design and planning stage of new developments. To encourage consideration of net zero for new construction within town limits CLEER staff will:

- Connect with developers to collect information on what it would take for them to design and build to net zero
- Create a resource guide for developers outlining strategies, approaches, advantages, economic implications of net zero building design, construction and operation
- Provide consulting services on net zero strategies during the green building code revision process

CLEER, 520 S. Third St, Suite 17, Carbondale, CO 81623 · 970 704-9200 · www.cleanenergyeconomy.net
Net Zero Energy District

From Carbondale Climate & Energy Action Plan: Strategy 2: Boost energy efficiency in existing commercial and residential buildings. Tactics: Designate carbon-neutral or net-zero districts and target areas of town, one neighborhood at a time. An example engagement campaign could include “neighborhood blitzes” to target neighborhoods.

In 2018, CLEER staff completed a report on a Net Zero Energy District that included a mix of commercial and residential buildings in an area between Second Street and Sopris Avenue. CLEER will continue to pursue the goals of the Net Zero Energy District by providing consulting services to the Third Street Center, the Roaring Fork School District and the Garfield County Library District.

For the Second St Townhomes, CLEER staff will pilot a new approach to existing residential efficiency measures uptake using a neighborhood approach that minimizes the number of energy assessments but maximizes implementation of measures throughout the neighborhood by encouraging healthy competition and peer pressure to make saving energy a social norm and neighborhood value. This pilot project will also venture to provide economic advantages to the neighborhood by implementing a group purchase program.

- Implement a uniform assessment strategy for neighborhood adoption
- Perform comprehensive energy assessments on two typical units
- Disseminate the results and the potential action steps throughout the neighborhood
- Facilitate a neighborhood meeting to promote advantages of efficiency upgrades and gauge interest for group purchasing of energy measures
Carbondale Climate-Friendly Transportation

From Carbondale Climate & Energy Action Plan: Transportation > Goals: Continue to decarbonize transportation by encouraging more widespread use of walking, biking and transit. Strategy 3: Continue to accelerate adoption of cleaner vehicles and lower carbon options, including electric vehicles (EVs) Tactics: Increase EV charging infrastructure;

CLEER will work with town staff to secure grant funding for a 25kW fast charging station for electric vehicles and will assist with events and programs that encourage walking and biking as primary modes of transportation.

Low-income Energy Efficiency Program


Carbondale’s low-income energy efficiency program builds on the existing county wide income-qualified program which leverages significant amounts of grant funding from Energy Outreach Colorado and participating utilities, including Xcel Energy, Black Hills Energy and Holy Cross Energy. CLEER staff will:

- Perform free energy assessments and free energy efficiency upgrades in a minimum of seven income qualified homes in the Town of Carbondale.
- Identify additional opportunities for low-income families such as free solar subscriptions through utility solar gardens.
- Perform extensive outreach, including door-to-door efforts to expand awareness of the program.
- Provide coaching and home energy site visits.
- Facilitate reimbursement for implemented measures
- Outreach to property managers and multifamily buildings
Sustainability Educational Series

From Carbondale Climate & Energy Action Plan: Strategy 2: Boost energy efficiency in existing commercial and residential buildings. Tactic: Increase new participation in programs through education and outreach campaigns

CLEER Staff will organize workshops and educational events focused on sustainability topics.

Educational workshops for contractors and homeowners to learn about the advantages of cold climate air source heat pumps have already been completed in February 2019. Further topics for the 2019 education series may include solar plus storage, electric vehicles, waste reduction, energy efficient water heaters, and zero energy design.

CLEER will reach out to partner organizations such as Colorado Mountain College, ACES, Wilderness Workshop, Holy Cross Energy and CORE to create a more unified message and reach out to a larger audience.

Staff will reach out to potential sponsors to leverage additional funds to cover marketing and venue costs. These events are a great way to educate the public on the town’s energy targets and to help connect attendees to products and services.

Sustainability Education Series completed in 2018:

<table>
<thead>
<tr>
<th>Event</th>
<th>Number of Attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Radon Mitigation Class</td>
<td>27</td>
</tr>
<tr>
<td>Waste Diversion Workshop</td>
<td>22</td>
</tr>
<tr>
<td>Building(s) for a Sustainable Future</td>
<td>156</td>
</tr>
<tr>
<td>Passive House Workshop</td>
<td>30</td>
</tr>
<tr>
<td>Net-zero Affordable Housing</td>
<td>44</td>
</tr>
<tr>
<td>Solar and Low Energy Homes</td>
<td>21</td>
</tr>
<tr>
<td>Regional Clean Energy Roundtable with Amory Lovins</td>
<td>75</td>
</tr>
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</table>
2019 Budget Summary: Carbondale funding amounts & additional leveraged funding

<table>
<thead>
<tr>
<th>Services</th>
<th>ToC Amount</th>
<th>Est. Leverage Amount</th>
<th>Leverage Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advance Concept of Net Zero Buildings and Districts</td>
<td>$14,000.00</td>
<td>$14,000.00</td>
<td>Utilities / Colorado Energy Office</td>
</tr>
<tr>
<td>Carbondale Climate-Friendly Transportation</td>
<td>$7,500.00</td>
<td>$15,000.00</td>
<td>Colorado Energy Office / Refuel Colorado</td>
</tr>
<tr>
<td>Low-income Program</td>
<td>$3,000.00</td>
<td>$25,000.00</td>
<td>Energy Outreach Colorado/ Utilities/Garfield Clean Energy</td>
</tr>
<tr>
<td>Sustainability Educational Series</td>
<td>$5,500.00</td>
<td>$10,000.00</td>
<td>Private sector / Utilities</td>
</tr>
<tr>
<td>Total</td>
<td>$30,000.00</td>
<td>$64,000.00</td>
<td></td>
</tr>
</tbody>
</table>
Holy Cross Energy invites you to learn about Cold Climate Air Source Heat Pumps (ccASHP)

How to heat and cool efficiently in extreme seasons.

when & where:
Roaring Fork Valley Workshop
February 27
- Morning session (trade partners): 7:30 - 9am
  Glenwood Community Center
- Afternoon Session (members): 5:30 - 7pm
  Carbondale Public Library
- FREE FOOD & DRINK!

Eagle Valley Workshop
February 28
- Morning Session (trade partners): 7:30 - 9am
  Eagle County Building,
  Garden Level Classroom
- Afternoon Session (members): 5:30 - 7pm
  Walking Mountains Science Center
- FREE FOOD & DRINK!

who:
- Sam Beeson, Manager Efficiency & Utility Programs
- Curtis Spresser, Mountain Region Area Sales Manager

what you will learn:
For trade partners
- ccASHP new product information
- New technology
- Best practices
- Installation guidelines and tips

For HCE members
- ccASHP product information
- Cost savings
- Beneficial electrification (change energy source from propane, natural gas or electric baseboard)
- Installation guidelines and tips
- Temperature control & efficiency

PLEASE RSVP
Mary Wiener: 970.947.5432 • mwiener@holycross.com
# Permit Application and Report of Changes

**Current License Number** 07-72538-0000  
All Answers Must Be Printed in Black Ink or Typewritten  
Local License Fee $ 300.00

1. Applicant is a  
   - [X] Corporation  
   - [ ] Individual  
   - [ ] Partnership  
   - [ ] Limited Liability Company

2. Name of Licensee  
   Three43 Main Inc

3. Trade Name  
   Phat Thai

4. Location Address  
   343 Main Street  
   City  
   Carbondale  
   County  
   Garfield  
   ZIP 81623

**SELECT THE APPROPRIATE SECTION BELOW AND PROCEED TO THE INSTRUCTIONS ON PAGE 2.**

<table>
<thead>
<tr>
<th>Section A – Manager reg/change</th>
<th>Section C</th>
</tr>
</thead>
<tbody>
<tr>
<td>License Account No.</td>
<td>[ ] Retail Warehouse Storage Permit (ea) $100.00</td>
</tr>
<tr>
<td>[ ] Manager's Registration (Hotel &amp; Restr.) $75.00</td>
<td>[ ] Wholesale Branch House Permit (ea) 100.00</td>
</tr>
<tr>
<td>[ ] Manager's Registration (Tavern) $75.00</td>
<td>[ ] Change Corp. or Trade Name Permit (ea) 50.00</td>
</tr>
<tr>
<td>[ ] Manager's Registration (Lodging &amp; Entertainment) $75.00</td>
<td>[ ] Change Location Permit (ea) 150.00</td>
</tr>
<tr>
<td>[X] Change of Manager (Other Licenses pursuant to section 44-3-301(6), C.R.S.) NO FEE</td>
<td>[ ] Change, Alter or Modify Premises $150.00 x 2 Total Fee 600.00</td>
</tr>
<tr>
<td>[ ] Total Fee 600.00</td>
<td>[ ] 300.00</td>
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</table>

<table>
<thead>
<tr>
<th>Section B – Duplicate License</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquor License No.</td>
<td>[ ] Addition of Optional Premises to Existing H/R $100.00 x</td>
</tr>
<tr>
<td>[ ] Duplicate License $50.00</td>
<td>[ ] Total Fee</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Do Not Write in This Space – For Department of Revenue Use Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date License Issued</td>
</tr>
<tr>
<td>--------------------</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

**The State may convert your check to a one time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.**

<table>
<thead>
<tr>
<th>TOTAL AMOUNT DUE</th>
<th>$ .00</th>
</tr>
</thead>
</table>
Instruction Sheet

For All Sections, Complete Questions 1-4 Located on Page 1

☐ Section A

To Register or Change Managers, check the appropriate box in section A and complete question 8 on page 4. Proceed to the Oath of Applicant for signature. Submit to State Licensing Authority for approval.

☐ Section B

For a Duplicate license, be sure to include the liquor license number in section B on page 1 and proceed to page 4 for Oath of Applicant signature.

☒ Section C

Check the appropriate box in section C and proceed below.

1) For a Retail Warehouse Storage Permit, go to page 3 complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Submit to State Licensing Authority for approval.

2) For a Wholesale Branch House Permit, go to page 3 and complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Submit to State Licensing Authority for approval.

3) To Change Trade Name or Corporation Name, go to page 3 and complete question 6 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.

4) To modify Premise, go to page 4 and complete question 9. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.

5) For Optional Premises go to page 4 and complete question 9. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County).

6) To Change Location, go to page 3 and complete question 7. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.

7) Campus Liquor Complex Designation, go to page 4 and complete question 10. Submit the necessary information and proceed to page 4 for Oath of Applicant signature.

8) To add another Related Facility to an existing Resort or Campus Liquor Complex, go to page 4 and complete question 11.
5. Retail Warehouse Storage Permit or a Wholesalers Branch House Permit

- Retail Warehouse Permit for:
  - On-Premises Licensee (Taverns, Restaurants etc.)
  - Off-Premises Licensee (Liquor stores)

- Wholesalers Branch House Permit

  Address of storage premise: ________________________________

  City ______________________, County ______________________, Zip ______________________

  Attach a deed/lease or rental agreement for the storage premises.

  Attach a detailed diagram of the storage premises.

6. Change of Trade Name or Corporation Name

- Change of Trade name / DDA only

- Corporate Name Change (Attach the following supporting documents)
  1. Certificate of Amendment filed with the Secretary of State, or
  2. Statement of Change filed with the Secretary of State, and
  3. Minutes of Corporate meeting, Limited Liability Members meeting, Partnership agreement.

<table>
<thead>
<tr>
<th>Old Trade Name</th>
<th>New Trade Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old Corporate Name</td>
<td>New Corporate Name</td>
</tr>
</tbody>
</table>

7. Change of Location

- NOTE TO RETAIL LICENSEES: An application to change location has a local application fee of $750 payable to your local licensing authority. You may only change location within the same jurisdiction as the original license that was issued. Pursuant to 44-3-311(1) C.R.S. Your application must be on file with the local authority thirty (30) days before a public hearing can be held.

  Date filed with Local Authority __________________ Date of Hearing ________________

  (a) Address of current premises

  City __________________ County __________________ Zip __________________

  (b) Address of proposed New Premises (Attach copy of the deed or lease that establishes possession of the premises by the licensee)

  Address __________________

  City __________________ County __________________ Zip __________________

  (c) New mailing address if applicable.

  Address __________________

  City __________________ County __________________ State ____ Zip ________

  (d) Attach detailed diagram of the premises showing where the alcohol beverages will be stored, served, possessed or consumed. Include kitchen area(s) for hotel and restaurants.
8. Change of Manager or to Register the Manager of a Tavern, Hotel and Restaurant, Lodging & Entertainment liquor license or licenses pursuant to section 44-3-301(8).

(a) Change of Manager (attach Individual History DR 8404-I H/R, Tavern and Lodging & Entertainment only)
   Former manager's name ________________________________
   New manager's name ________________________________

(b) Date of Employment ________________________________
   Has manager ever managed a liquor licensed establishment? Yes ☐ No ☐
   Does manager have a financial interest in any other liquor licensed establishment? Yes ☐ No ☐
   If yes, give name and location of establishment ________________________________

9. Modification of Premises, Addition of an Optional Premises, or Addition of Related Facility

NOTE: Licensees may not modify or add to their licensed premises until approved by state and local authorities.

(a) Describe change proposed ____________

(b) If the modification is temporary, when will the proposed change:
   Start ____________ (mo/day/year) End ____________ (mo/day/year)
   NOTE: THE TOTAL STATE FEE FOR TEMPORARY MODIFICATION IS $300.00

(c) Will the proposed change result in the licensed premises now being located within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?
   (If yes, explain in detail and describe any exemptions that apply) Yes ☐ No ☒

(d) Is the proposed change in compliance with local building and zoning laws? Yes ☒ No ☐

(e) If this modification is for an additional Hotel and Restaurant Optional Premises has the local authority authorized by resolution or ordinance the issuance of optional premises? Yes ☒ No ☐

(f) Attach a diagram of the current licensed premises and a diagram of the proposed changes for the licensed premises.

(g) Attach any existing lease that is revised due to the modification.

10. Campus Liquor Complex Designation

An institution of higher education or a person who contracts with the institution to provide food services

(a) I wish to designate my existing ____________ Liquor License # ____________ to a Campus Liquor Complex

11. Additional Related Facility

To add a Related Facility to an existing Resort or Campus Liquor Complex, include the name of the Related Facility and include the address and an outlined drawing of the Related Facility Premises.

(a) Address of Related Facility ________________________________

(b) Outlined diagram provided Yes ☐ No ☐
Oath of Applicant

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Owner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>03/20/19</td>
</tr>
</tbody>
</table>

Report and Approval of LOCAL Licensing Authority (CITY / COUNTY)

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the applicable provisions of Title 44, Articles 4 and 3, C.R.S., as amended. Therefore, This Application is Approved.

<table>
<thead>
<tr>
<th>Local Licensing Authority (City or County)</th>
<th>Date filed with Local Authority</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
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Report of STATE Licensing Authority

The foregoing has been examined and complies with the filing requirements of Title 44, Article 3, C.R.S., as amended.

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REVOCA~BLE LICENSE AGREEMENT

THIS REVOCA~BLE LICENSE AGREEMENT (hereinafter “Agreement”) is made and entered into this 9th day of April, 2019, by and between the Town of Carbondale, Colorado, a Colorado home rule municipal corporation (hereinafter “Town”) and Three43 Main Inc, DBA Phat Thai , a Colorado S Corporation [type of entity: e.g., “a Colorado limited liability company”] (hereinafter “Licensee”).

WHEREAS, Licensee desires to obtain a revocable and non-exclusive license from the Town to use and occupy a portion of the Main Street right-of-way for temporary patio improvements for food and beverage service; and

WHEREAS, the Town is willing to grant Licensee a revocable license for such purpose, upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Town and Licensee agree as follows:

1. Licensed Premises. The Town hereby grants to Licensee a revocable and non-exclusive license to occupy and use, subject to all of the terms and conditions of this Agreement, the following described premises (the “Premises”): that portion of the Main Street right-of-way and sidewalk lying within the Main Street right-of-way that is located adjacent to 343 Main Street, as more particularly described and depicted in Exhibit “A”, attached to this Agreement and incorporated into this Agreement by reference.

2. Term. Unless sooner terminated as provided by this Agreement, the term of the license herein granted is expressly limited to the following periods: May 1 – October 15, 2019, collectively, the “Term.”

3. Payment. Licensee shall pay for the license granted herein a non-refundable license fee of $50.00, which fee shall be paid by Licensee within 15 days of receipt of a Town invoice for same.

4. Purpose and Conduct of Use. The Premises may be occupied and used by Licensee during the Term of this Agreement for the sole purpose of constructing, installing, operating, maintaining and repairing a temporary patio for food and beverage service. In its use and occupancy of the Premises, Licensee shall strictly comply with the following standards and requirements:

   a. Service shall commence no earlier than 10:00 a.m. and end no later than 2:00 a.m.

   b. The Licensee shall provide adequate access to and from the Premises, including access pursuant to the Americans with Disabilities Act (ADA) via curb ramps, pedestrian ramps, or other means.

   c. Alcohol service on the patio shall be limited to retail sales of alcohol beverages by the drink. No alcohol tastings or private parties with alcohol service shall be permitted on the patio. Alcohol service requires and is subject to appropriate State
of Colorado and Town permits and/or licenses. Licensee acknowledges no assurance of any such approval has been made or relied upon.

d. No chairs, tables or any other Licensee improvements, equipment or facilities shall be placed within the sidewalk corridor depicted on Exhibit “A,” which corridor shall remain open at all times for pedestrian passage.

e. No amplified sound, signs, banners, utility connections, or hazardous materials shall be permitted or installed on the Premises.

f. Licensee shall at its sole expense promptly remove from the Premises and any adjacent areas all trash generated by its operation of the patio facilities.

g. Licensee shall avoid any damage or interference with any Town installations, structures, utilities, or improvements on, under, or adjacent to the Premises.

5. **Improvements.** Licensee shall have the right to install on the Premises improvements consisting of decking, fencing, tables, chairs and other necessary facilities as described and depicted in Exhibit “B,” collectively, the “Improvements.” Licensee shall be responsible at its sole expense for the construction, installation, operation, maintenance, repair and removal of the Improvements. All Improvements installed by the Licensee shall be completed in accordance with plans and specifications approved in advance by the Town. Any changes shall require additional advance approval by the Town. All work shall be completed in compliance with all codes, ordinances, rules and regulations of the Town. Except for the Improvements specifically authorized by the Town on Exhibit “B”, Licensee shall not place, build, expand, or add to any structures or other items on the Premises.

6. **General Use and Care of Premises.** Licensee shall take such actions as are necessary to maintain the Improvements and Premises in good and safe condition at all times during the Term. Licensee further agrees to comply at all times during the Term with the ordinances, resolutions, rules, and regulations of the Town in Licensee’s use and occupancy of the Premises.

7. **No Estate in Premises.** Licensee agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the Premises, or any other interest in real property included in the Premises, by virtue of this Agreement or by virtue of Licensee’s occupancy or use of the Premises.

8. **Termination.** The license granted by this Agreement may be suspended or terminated at any time for any reason. Licensee’s consent shall not be required to suspend or terminate the license. To the extent practicable, the Town shall provide written notice at least 45 days in advance of the termination date.

9. **Compliance.** If Licensee fails to comply with its obligations under this Agreement, the Town may, at its sole option, terminate the license or take such measures as it determines necessary to bring the Premises into compliance with the terms of the Agreement. The cost of termination or compliance measures shall be paid by Licensee.
10. **Acknowledgment of General Condition.** Licensee acknowledges that its use and occupancy hereunder is of the Premises in its as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the Town shall have no obligation to repair, replace or improve any portion of the Premises in order to make such Premises suitable for Licensee's intended uses.

11. **Acknowledgment and Acceptance of Specific Matters.** Licensee specifically acknowledges that the Premises may not currently meet standards under federal, state or local law for Licensee's intended use, including but not limited to accessibility standards under the Americans with Disabilities Act and Uniform Building Code and adopted and in force in the Town. Compliance with such standards, if required for Licensee's use, shall be at the sole cost and expense of Licensee. If Licensee determines that compliance with such standards for Licensee's use is not feasible or economical, then Licensee may terminate this Agreement and the parties shall be released from any further obligations hereunder.

12. **Liens.** Licensee shall be solely responsible for and shall promptly pay for all services, labor or materials furnished to the Premises at the instance of Licensee. The Town may at Licensee's expense discharge any liens or claims arising from the same.

13. **Personal Property.** The Town shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Licensee placed or located on, at, or in the Premises, it being acknowledged and understood by Licensee that the safety and security of any such property is the sole responsibility and risk of Licensee.

14. **Right of Entry.**

a. Notwithstanding any other provisions of this Agreement to the contrary, the Town shall at all times have the right to enter the Premises to inspect, improve, maintain, alter, or utilize the Premises or an adjacent premises.

b. In the case of an emergency, including but not limited to street repairs, water main breaks, and other utility problems, no notice shall be required, and the Town may suspend or terminate the license and utilize the Premises as long as necessary, in the Town's sole discretion, to adequately respond to such emergency. If such entry requires disturbance of any items placed upon the Premises under this Agreement, the Town shall not be required to repair or replace any such disturbance.

c. In the case of non-emergency situations, including but not limited to Town special events, the shall provide one week notice of any temporary suspension of the license,

15. **Indemnity and Release.** Licensee shall be solely responsible for any damages suffered by the Town or others as a result of Licensee's use and occupancy of the Premises during the Term. Licensee agrees to indemnify and hold harmless the Town, its elected and appointed officers, agents, employees and insurers harmless from and against all liability, claims, damages, losses, and expenses arising out of, resulting from, or in any way connected with Licensee's use and occupancy of the Premises, the conduct of Licensee's operations or activities on the Premises, liens or other claims made, asserted or recorded against the Premises as a result of Licensee's use or occupancy thereof, or the rights and obligations of Licensee under this Agreement, including
but not limited to any attorneys' fees, costs, or expert witness fees incurred by the Town in defense of any claim. Licensee hereby further expressly, releases and discharges the Town, its elected and appointed officers, agents, employees and insurers, from any and all liabilities for any loss, injury, death or damages or any person or property that may be sustained by reason of the use or occupancy of the Premises under this Agreement, excepting only those arising solely from willful and wanton conduct of the Town's officers or employees.

16. **Insurance.** Licensee shall at its expense obtain, carry and maintain at all times, and shall require each contractor or subcontractor of Licensee performing work on the Premises during the Term to obtain, carry and maintain, a policy of comprehensive general liability insurance insuring the Town and Licensee against any liability arising out of or in connection with Licensee's use, occupancy or maintenance of the Premises or the condition thereof. Such insurance shall be at all times in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage per occurrence. If Licensee serves liquor on the Premises, Licensee shall also at its expense obtain, carry and maintain at all times host and general liquor liability insurance in the same amount. Such policies shall include coverage for liquor liability and such other endorsements and coverage as the Town may reasonably require. The Town, its elected and appointed officers, agents and employees shall be named as additional insureds on such policies. The policies required above shall be primary insurance, and any insurance carried by the Town shall be excess and not contributory insurance. Such policies shall contain a severability of interests provision. Licensee shall be solely responsible for any deductible losses under each of the policies required above. A certificate of insurance shall be completed by Licensee's insurance agent(s) as evidence that a policy or policies providing the coverages, conditions, and minimum limits required herein are in full force and effect, and shall be subject to review and approval by the Town prior to commencement of Licensee's occupancy of the Premises. As between the parties hereto, the limits of such insurance shall not limit the liability of Licensee. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach hereof upon which the Town may immediately terminate this Agreement.

17. **No Waiver of Immunity or Impairment of Other Obligations.** The Town does not waive or intend to waive by any provision of this Agreement the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time to time amended, or otherwise available to the Town, and its officers and employees.

18. **Restoration of Premises.** At or before the expiration of both the Fall Season and the Summer Season, or otherwise upon the termination of this Agreement, Licensee shall deliver up the Premises in as good a condition as when Licensee took possession, excepting only ordinary wear and tear. At such times, Licensee at its sole expense shall remove from the Premises all Improvements and other items placed on the Premises. If any such Improvements or items are not removed at such times, the Town may remove them at Licensee's sole expense, and Licensee shall reimburse the Town for all costs incurred, including but not limited to staff time and administrative overhead, within 15 days of receipt of a Town invoice for the same.
19. **Notices.** Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by facsimile transmission or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

**TOWN:**

Town of Carbondale  
c/o Town Manager  
511 Colorado Avenue  
Carbondale, CO 81601

**LICENSEE:**

Three43 Main Inc DBA Phat Thai  
0302 Escalante Road  
Carbondale, CO 81623

or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery, upon facsimile receipt, or upon mailing.

20. **Existing Rights.** Licensee understands that the license granted hereunder is granted subject to prior agreements and subject to all easements and other interests of record applicable to the Premises. Licensee shall be solely responsible for coordinating its activities hereunder with the holders of such agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such agreements or easements or other interests.

21. **No Waiver.** Waiver by the Town of any breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

22. **Successors & Assigns.** This Agreement is personal to the parties hereto. Licensee shall not transfer or assign any rights hereunder without the prior written approval of the Town, which approval shall be at the Town's sole option and discretion. The sale or transfer of Licensee's business shall result in automatic termination of this Agreement.

23. **Entire Agreement; Authority.** This Agreement is the entire agreement between the Town and Licensee and may be amended only by written instrument subsequently executed by the Town and Licensee. The undersigned signatory of Licensee represents that he or she has been duly authorized to execute this Agreement on behalf of Licensee and has full power and authority to bind Licensee to the terms and conditions hereof.

24. **Survival.** All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and enforcement shall survive termination of this Agreement.

25. **No Third Party Beneficiaries.** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

TOWN OF CARBONDALE, a Colorado home rule municipal corporation

By: ____________________________
Title: Town Manager

ATTEST:

________________________________________
Town Clerk

LICENSEE:

By: Lari Goode
Title: President

STATE OF COLORADO )
COUNTY OF GARFIELD ) ss

The above and foregoing signature of Lari Goode, as President of Three 43 Main, Inc., was subscribed and sworn to before me this 21 day of March, 2019.

My commission expires on: July 29, 2019

Notary Public
To: Mayor Dan Richardson and
Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Renewal for Sopris Liquor & Wine located at 1026 Hwy. 133

Date: April 3, 2019

I have completed the requested record checks for the establishment and following individual:

Joe Marshall – Applicant

I have found no in-house liquor violation records.

I recommend the approval for the liquor license renewal.
SOPRIS LIQUOR AND WINE
1026 HWY 133
CARBONDALE CO 81623

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

Licensee Name
K & A LLC

DBA
SOPRIS LIQUOR AND WINE

License Type
Liquor Store (city)

Sales Tax License #
27804907

Expiration Date
07/20/2019

Due Date
06/05/2019

Operating Manager
Joe Marshall
Date of Birth
Glenwood Springs, CO 81641
Home Address
Email Address
JM MARSHALL @ SOPRISLIQUOR.COM

Manager Phone Number
970.963.5880
Phone Number
9709635880

Street Address
1026 HWY 133 CARBONDALE CO 81623

Mailing Address
1026 HWY 133 CARBONDALE CO 81623

1. Do you have legal possession of the premises at the street address above? □ YES □ NO
   Is the premises owned or rented? □ Owned □ Rented* *If rented, expiration date of lease 4/1/2041

4. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. □ YES □ NO

NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.

3. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. □ YES □ NO

4. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. □ YES □ NO

5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. □ YES □ NO

AFFIRMATION & CONSENT
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Joe Marshall

Signature
Date 3/2/19

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY
The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. THEREFORE THIS APPLICATION IS APPROVED.

Local Licensing Authority For

Signature
Title
Date
Attest
**Permit Application and Report of Changes**

**Current License Number**: 4700318

All Answers Must Be Printed in Black Ink or Typewritten

Local License Fee: $ 0

1. **Applicant is a**
   - Corporation
   - Individual
   - Partnership
   - Limited Liability Company

2. **Name of Licensee**: Lagerdeman Inc
3. **Trade Name**: Black Nugget

4. **Location Address**: 403 Main Street

City: Carbondale  County: Garfield  ZIP: 81623

**SELECT THE APPROPRIATE SECTION BELOW AND PROCEED TO THE INSTRUCTIONS ON PAGE 2.**

<table>
<thead>
<tr>
<th>Section A – Manager reg/change</th>
<th>Section C</th>
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<tbody>
<tr>
<td>• License Account No.</td>
<td>☐ Retail Warehouse Storage Permit (ea) $100.00</td>
</tr>
<tr>
<td>□ Manager's Registration (Hotel &amp; Restr.) $75.00</td>
<td>☐ Wholesale Branch House Permit (ea) 100.00</td>
</tr>
<tr>
<td>□ Manager's Registration (Tavern) $75.00</td>
<td>☐ Change Corp. or Trade Name Permit (ea) 50.00</td>
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<tr>
<td>□ Manager's Registration (Lodging &amp; Entertainment) $75.00</td>
<td>☐ Change Location Permit (ea) 150.00</td>
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<td>□ Change of Manager (Other Licenses pursuant to section 44-3-301(8), C.R.S.) NO FEE</td>
<td>☐ Change, Alter or Modify Premises $150.00 x 2 Total Fee $300</td>
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<th>Section B – Duplicate License</th>
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<tr>
<td>• Liquor License No.</td>
<td>☐ Addition of Optional Premises to Existing H/R $100.00 x Total Fee</td>
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<tr>
<td>□ Duplicate License $50.00</td>
<td>☐ Addition of Related Facility to an Existing Resort or Campus Liquor Complex $160.00 x Total Fee</td>
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<td>☐ Campus Liquor Complex Designation No Fee</td>
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**Do Not Write in This Space – For Department of Revenue Use Only**

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<th>Date License Issued</th>
<th>License Account Number</th>
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The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is returned due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.

**TOTAL AMOUNT DUE**: $ .00
Instruction Sheet

For All Sections, Complete Questions 1-4 Located on Page 1

☐ Section A

To Register or Change Managers, check the appropriate box in section A and complete question 8 on page 4. Proceed to the Oath of Applicant for signature. Submit to State Licensing Authority for approval.

☐ Section B

For a Duplicate license, be sure to include the liquor license number in section B on page 1 and proceed to page 4 for Oath of Applicant signature.

☒ Section C

Check the appropriate box in section C and proceed below.

1) For a Retail Warehouse Storage Permit, go to page 3 complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Submit to State Licensing Authority for approval.

2) For a Wholesale Branch House Permit, go to page 3 and complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Submit to State Licensing Authority for approval.

3) To Change Trade Name or Corporation Name, go to page 3 and complete question 6 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.

4) To modify Premise, go to page 4 and complete question 9. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.

5) For Optional Premises go to page 4 and complete question 9. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County).

6) To Change Location, go to page 3 and complete question 7. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.

7) Campus Liquor Complex Designation, go to page 4 and complete question 10. Submit the necessary information and proceed to page 4 for Oath of Applicant signature.

8) To add another Related Facility to an existing Resort or Campus Liquor Complex, go to page 4 and complete question 11.
6. Retail Warehouse Storage Permit or a Wholesalers Branch House Permit

- Retail Warehouse Permit for:
  - On-Premises Licensee (Taverns, Restaurants etc.)
  - Off-Premises Licensee (Liquor stores)

- Wholesalers Branch House Permit

Address of storage premise: ________________________________

City ____________________, County ________________________ Zip ________________

Attach a deed/lease or rental agreement for the storage premises.
Attach a detailed diagram of the storage premises.

6. Change of Trade Name or Corporation Name

- Change of Trade name / DBA only

- Corporate Name Change (Attach the following supporting documents)
  1. Certificate of Amendment filed with the Secretary of State, or
  2. Statement of Change filed with the Secretary of State, and
  3. Minutes of Corporate meeting, Limited Liability Members meeting, Partnership agreement.

<table>
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<th>Old Trade Name</th>
<th>New Trade Name</th>
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<tbody>
<tr>
<td>Old Corporate Name</td>
<td>New Corporate Name</td>
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7. Change of Location

NOTE TO RETAIL LICENSEES: An application to change location has a local application fee of $760 payable to your local licensing authority. You may only change location within the same jurisdiction as the original license that was issued. Pursuant to 44-3-311(1) C.R.S. Your application must be on file with the local authority thirty (30) days before a public hearing can be held.

Date filed with Local Authority __________________________ Date of Hearing __________________

(a) Address of current premises __________________________

City ____________________, County ________________________ Zip __________________

(b) Address of proposed New Premises (Attach copy of the deed or lease that establishes possession of the premises by the licensee)

Address ________________________________

City ____________________, County ________________________ Zip __________________

(c) New mailing address if applicable.

Address ________________________________

City ____________________, County ________________________ State ________ Zip ________________

(d) Attach detailed diagram of the premises showing where the alcohol beverages will be stored, served, possessed or consumed. Include kitchen area(s) for hotel and restaurants.
8. **Change of Manager** or to Register the Manager of a Tavern, Hotel and Restaurant, Lodging & Entertainment liquor license or licenses pursuant to section 44-3-301(6).
   (a) Change of Manager (attach Individual History DR 8404-I H/R, Tavern and Lodging & Entertainment only)
      
      Former manager's name ____________________________________________
      
      New manager's name _____________________________________________
      
   (b) Date of Employment ____________________________
      
      Has manager ever managed a liquor licensed establishment? Yes □ No □
      
      Does manager have a financial interest in any other liquor licensed establishment? Yes □ No □
      
      If yes, give name and location of establishment ____________________________________________

9. **Modification of Premises, Addition of an Optional Premises, or Addition of Related Facility**
   
   NOTE: Licensees may not modify or add to their licensed premises until approved by state and local authorities.
   
   (a) Describe change proposed Add 12 ft x 20 ft decks with 32 inch entry on 4th Street parking area directly across from bar Entry/Exit.

   (b) If the modification is temporary, when will the proposed change:
      
      Start 05/01/2019 (mo/day/year) End 10/15/2019 (mo/day/year)
      
      NOTE: THE TOTAL STATE FEE FOR TEMPORARY MODIFICATION IS $300.00

   (c) Will the proposed change result in the licensed premises now being located within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?
      
      (If yes, explain in detail and describe any exemptions that apply) Yes □ No □

   (d) Is the proposed change in compliance with local building and zoning laws? Yes □ No □

   (e) If this modification is for an additional Hotel and Restaurant Optional Premises has the local authority authorized by resolution or ordinance the issuance of optional premises? Yes □ No □

   (f) Attach a diagram of the current licensed premises and a diagram of the proposed changes for the licensed premises.

   (g) Attach any existing lease that is revised due to the modification.

10. **Campus Liquor Complex Designation**
    
    An institution of higher education or a person who contracts with the institution to provide food services
    
    (a) I wish to designate my existing ___________ Liquor License # ___________ to a Campus Liquor Complex
        
        Yes □ No □

11. **Additional Related Facility**
    
    To add a Related Facility to an existing Resort or Campus Liquor Complex, include the name of the Related Facility and include the address and an outlined drawing of the Related Facility Premises.
    
    (a) Address of Related Facility ______________________________________

    (b) Outlined diagram provided Yes □ No □
## Oath of Applicant

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

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<tr>
<td></td>
<td>President</td>
<td>4/1/2019</td>
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## Report and Approval of LOCAL Licensing Authority (CITY / COUNTY)

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the applicable provisions of Title 44, Articles 4 and 3, C.R.S., as amended. Therefore, This Application is Approved.

<table>
<thead>
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<th>Local Licensing Authority (City or County)</th>
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## Report of STATE Licensing Authority

The foregoing has been examined and complies with the filing requirements of Title 44, Article 3, C.R.S., as amended.

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Black Nugget

Proposed changes for the licensed premises would be adding a deck to current licensed premises.

Entry/Door

Public Sidewalk

Entry/Exit

Entry/Exit for Deck

32-inch entry which is wheelchair accessible

Change, Alter or Modification of Premises

4th Street

Tables

12 Feet

Tables

20 Feet
SAMPLE REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (hereinafter "Agreement") is made and entered into this ___ day of __________, 20___, by and between the Town of Carbondale, Colorado, a Colorado home rule municipal corporation (hereinafter "Town") and ____________, Inc. [legal name of licensee], a ____________ [type of entity; e.g., "a Colorado limited liability company"] (hereinafter "Licensee").

WHEREAS, Licensee desires to obtain a revocable and non-exclusive license from the Town to use and occupy a portion of the Main Street right-of-way for temporary patio improvements for food and beverage service; and

WHEREAS, the Town is willing to grant Licensee a revocable license for such purpose, upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Town and Licensee agree as follows:

1. Licensed Premises. The Town hereby grants to Licensee a revocable and non-exclusive license to occupy and use, subject to all of the terms and conditions of this Agreement, the following described premises (the "Premises"): that portion of the Main Street right-of-way and sidewalk lying within the Main Street right-of-way that is located adjacent to ____________, as more particularly described and depicted in Exhibit "A", attached to this Agreement and incorporated into this Agreement by reference.

2. Term. Unless sooner terminated as provided by this Agreement, the term of the license herein granted is expressly limited to the following periods: May 1 – October 15, 2019, collectively, the "Term."

3. Payment. Licensee shall pay for the license granted herein a non-refundable license fee of $50.00, which fee shall be paid by Licensee within 15 days of receipt of a Town invoice for same.

4. Purpose and Conduct of Use. The Premises may be occupied and used by Licensee during the Term of this Agreement for the sole purpose of constructing, installing, operating, maintaining and repairing a temporary patio for food and beverage service. In its use and occupancy of the Premises, Licensee shall strictly comply with the following standards and requirements:

a. Service shall commence no earlier than 10:00 a.m. and end no later than 2:00 a.m.

b. The Licensee shall provide adequate access to and from the Premises, including access pursuant to the Americans with Disabilities Act (ADA) via curb ramps, pedestrian ramps, or other means.

c. Alcohol service on the patio shall be limited to retail sales of alcohol beverages by the drink. No alcohol tastings or private parties with alcohol service shall be permitted on the patio. Alcohol service requires and is subject to appropriate State
of Colorado and Town permits and/or licenses. Licensee acknowledges no assurance of any such approval has been made or relied upon.

d. No chairs, tables or any other Licensee improvements, equipment or facilities shall be placed within the sidewalk corridor depicted on Exhibit “A,” which corridor shall remain open at all times for pedestrian passage.

e. No amplified sound, signs, banners, utility connections, or hazardous materials shall be permitted or installed on the Premises.

f. Licensee shall at its sole expense promptly remove from the Premises and any adjacent areas all trash generated by its operation of the patio facilities.

g. Licensee shall avoid any damage or interference with any Town installations, structures, utilities, or improvements on, under, or adjacent to the Premises.

5. **Improvements.** Licensee shall have the right to install on the Premises improvements consisting of decking, fencing, tables, chairs and other necessary facilities as described and depicted in Exhibit “B,” collectively, the “Improvements.” Licensee shall be responsible at its sole expense for the construction, installation, operation, maintenance, repair and removal of the Improvements. All Improvements installed by the Licensee shall be completed in accordance with plans and specifications approved in advance by the Town. Any changes shall require additional advance approval by the Town. All work shall be completed in compliance with all codes, ordinances, rules and regulations of the Town. Except for the Improvements specifically authorized by the Town on Exhibit “B”, Licensee shall not place, build, expand, or add to any structures or other items on the Premises.

6. **General Use and Care of Premises.** Licensee shall take such actions as are necessary to maintain the Improvements and Premises in good and safe condition at all times during the Term. Licensee further agrees to comply at all times during the Term with the ordinances, resolutions, rules, and regulations of the Town in Licensee’s use and occupancy of the Premises.

7. **No Estate in Premises.** Licensee agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the Premises, or any other interest in real property included in the Premises, by virtue of this Agreement or by virtue of Licensee’s occupancy or use of the Premises.

8. **Termination.** The license granted by this Agreement may be suspended or terminated at any time for any reason. Licensee’s consent shall not be required to suspend or terminate the license. To the extent practicable, the Town shall provide written notice at least 45 days in advance of the termination date.

9. **Compliance.** If Licensee fails to comply with its obligations under this Agreement, the Town may, at its sole option, terminate the license or take such measures as it determines necessary to bring the Premises into compliance with the terms of the Agreement. The cost of termination or compliance measures shall be paid by Licensee.
10. **Acknowledgment of General Condition.** Licensee acknowledges that its use and occupancy hereunder is of the Premises in its as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the Town shall have no obligation to repair, replace or improve any portion of the Premises in order to make such Premises suitable for Licensee’s intended uses.

11. **Acknowledgment and Acceptance of Specific Matters.** Licensee specifically acknowledges that the Premises may not currently meet standards under federal, state or local law for Licensee’s intended use, including but not limited to accessibility standards under the Americans with Disabilities Act and Uniform Building Code and adopted and in force in the Town. Compliance with such standards, if required for Licensee’s use, shall be at the sole cost and expense of Licensee. If Licensee determines that compliance with such standards for Licensee’s use is not feasible or economical, then Licensee may terminate this Agreement and the parties shall be released from any further obligations hereunder.

12. **Liens.** Licensee shall be solely responsible for and shall promptly pay for all services, labor or materials furnished to the Premises at the instance of Licensee. The Town may at Licensee’s expense discharge any liens or claims arising from the same.

13. **Personal Property.** The Town shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Licensee placed or located on, at, or in the Premises, it being acknowledged and understood by Licensee that the safety and security of any such property is the sole responsibility and risk of Licensee.

14. **Right of Entry.**

a. Notwithstanding any other provisions of this Agreement to the contrary, the Town shall at all times have the right to enter the Premises to inspect, improve, maintain, alter, or utilize the Premises or an adjacent premises.

b. In the case of an emergency, including but not limited to street repairs, water main breaks, and other utility problems, no notice shall be required, and the Town may suspend or terminate the license and utilize the Premises as long as necessary, in the Town’s sole discretion, to adequately respond to such emergency. If such entry requires disturbance of any items placed upon the Premises under this Agreement, the Town shall not be required to repair or replace any such disturbance.

c. In the case of non-emergency situations, including but not limited to Town special events, the shall provide one week notice of any temporary suspension of the license,

15. **Indemnity and Release.** Licensee shall be solely responsible for any damages suffered by the Town or others as a result of Licensee’s use and occupancy of the Premises during the Term. Licensee agrees to indemnify and hold harmless the Town, its elected and appointed officers, agents, employees and insurers harmless from and against all liability, claims, damages, losses, and expenses arising out of, resulting from, or in any way connected with Licensee’s use and occupancy of the Premises, the conduct of Licensee’s operations or activities on the Premises, liens or other claims made, asserted or recorded against the Premises as a result of Licensee’s use or occupancy thereof, or the rights and obligations of Licensee under this Agreement, including
but not limited to any attorneys’ fees, costs, or expert witness fees incurred by the Town in defense of any claim. Licensee hereby further expressly, releases and discharges the Town, its elected and appointed officers, agents, employees and insurers, from any and all liabilities for any loss, injury, death or damages or any person or property that may be sustained by reason of the use or occupancy of the Premises under this Agreement, excepting only those arising solely from willful and wanton conduct of the Town’s officers or employees.

16. **Insurance.** Licensee shall at its expense obtain, carry and maintain at all times, and shall require each contractor or subcontractor of Licensee performing work on the Premises during the Term to obtain, carry and maintain, a policy of comprehensive general liability insurance insuring the Town and Licensee against any liability arising out of or in connection with Licensee’s use, occupancy or maintenance of the Premises or the condition thereof. Such insurance shall be at all times in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage per occurrence. If Licensee serves liquor on the Premises, Licensee shall also at its expense obtain, carry and maintain at all times host and general liquor liability insurance in the same amount. Such policies shall include coverage for liquor liability and such other endorsements and coverage as the Town may reasonably require. The Town, its elected and appointed officers, agents and employees shall be named as additional insureds on such policies. The policies required above shall be primary insurance, and any insurance carried by the Town shall be excess and not contributory insurance. Such policies shall contain a severability of interests provision. Licensee shall be solely responsible for any deductible losses under each of the policies required above. A certificate of insurance shall be completed by Licensee’s insurance agent(s) as evidence that a policy or policies providing the coverages, conditions, and minimum limits required herein are in full force and effect, and shall be subject to review and approval by the Town prior to commencement of Licensee’s occupancy of the Premises. As between the parties hereto, the limits of such insurance shall not limit the liability of Licensee. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach hereof upon which the Town may immediately terminate this Agreement.

17. **No Waiver of Immunity or Impairment of Other Obligations.** The Town does not waive or intend to waive by any provision of this Agreement the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time to time amended, or otherwise available to the Town, and its officers and employees.

18. **Restoration of Premises.** At or before the expiration of both the Fall Season and the Summer Season, or otherwise upon the termination of this Agreement, Licensee shall deliver up the Premises in as good a condition as when Licensee took possession, excepting only ordinary wear and tear. At such times, Licensee at its sole expense shall remove from the Premises all Improvements and other items placed on the Premises. If any such Improvements or items are not removed at such times, the Town may remove them at Licensee’s sole expense, and Licensee shall reimburse the Town for all costs incurred, including but not limited to staff time and administrative overhead, within 15 days of receipt of a Town invoice for the same.
19. **Notices.** Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by facsimile transmission or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

**TOWN:**

Town of Carbondale  
c/o Town Manager  
511 Colorado Avenue  
Carbondale, CO 81601

**LICENSEE:**

or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery, upon facsimile receipt, or upon mailing.

20. **Existing Rights.** Licensee understands that the license granted hereunder is granted subject to prior agreements and subject to all easements and other interests of record applicable to the Premises. Licensee shall be solely responsible for coordinating its activities hereunder with the holders of such agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such agreements or easements or other interests.

21. **No Waiver.** Waiver by the Town of any breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

22. **Successors & Assigns.** This Agreement is personal to the parties hereto. Licensee shall not transfer or assign any rights hereunder without the prior written approval of the Town, which approval shall be at the Town’s sole option and discretion. The sale or transfer of Licensee’s business shall result in automatic termination of this Agreement.

23. **Entire Agreement; Authority.** This Agreement is the entire agreement between the Town and Licensee and may be amended only by written instrument subsequently executed by the Town and Licensee. The undersigned signatory of Licensee represents that he or she has been duly authorized to execute this Agreement on behalf of Licensee and has full power and authority to bind Licensee to the terms and conditions hereof.

24. **Survival.** All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and enforcement shall survive termination of this Agreement.

25. **No Third Party Beneficiaries.** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first above written.

TOWN OF CARBONDALE, a Colorado home rule municipal corporation

By: ________________________________
Title: Town Manager

ATTEST:

______________________________
Town Clerk

LICENSEE: ________________________________

By: ________________________________
Title: ________________________________

STATE OF COLORADO )
COUNTY OF GARFIELD ) ss

The above and foregoing signature of ________________________________, as __________________ of ________________________, was subscribed and sworn to before me this ___ day of ____________________, 20__.

Witness my hand and official seal.

My commission expires on: ______________________

______________________________
Notary Public
EXHIBIT A
OF
REVOCABLE LICENSE AGREEMENT

Description and Depiction of Licensed Premises
EXHIBIT B
OF
REVOCABLE LICENSE AGREEMENT

Detailed description of Patio Improvements
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into as of March 1, 2019 (the “Effective Date”) by and among Tumbleweed Carbondale, LLC (“TWC”), TWCHM, LLC (“TWCHM”), and Tumbleweed Property Management, LLC (“TWPM”), on the one hand, and the Town of Carbondale (the “Town”), on the other hand. TWC, TWCHM, and TWPM shall be referred to collectively as “Claimants.” The Town will be referred to as “Defendant.” Collectively, Claimants and Defendant shall be referred to as the “Parties” or, individually, as a “Party.”

RECITALS

WHEREAS in or about June 2018, the Town commenced at least three actions in the Town of Carbondale, Colorado Municipal Court against Adam Phillips, captioned The People of the State of Colorado, County of Garfield, Town of Carbondale v. Adam Phillips, Case Nos. 18-0329, 18-0330, and 18-0342, for alleged violations of Sections 1-4-20 and 6-5-110(g) of the Town’s Municipal Code;

WHEREAS in or about June 2018, the Town commenced at least three actions in the Town of Carbondale, Colorado Municipal Court against Sherri Marzario, captioned The People of the State of Colorado, County of Garfield, Town of Carbondale v. Sherri Marzario, Case Nos. 18-0331, 18-0332, and 18-0340, for alleged violations of Sections 1-4-20 and 6-5-110(g) of the Town’s Municipal Code;

WHEREAS in or about June 2018, the Town commenced at least three actions in the Town of Carbondale, Colorado Municipal Court against Daniel Griffin, captioned The People of the State of Colorado, County of Garfield, Town of Carbondale v. Daniel Griffin, Case Nos. 18-0333, 18-0334, and 18-0341, for alleged violations of Sections 1-4-20 and 6-5-110(g) of the Town’s Municipal Code;

WHEREAS the Town of Carbondale Municipal Court Case Nos. 18-0329, 18-0330, 18-0331, 18-0332, 18-0333, 18-0334, 18-0340, 18-0341, and 18-0342 were consolidated (Case Nos. 18-0329, 18-0330, 18-0331, 18-0332, 18-0333, 18-0334, 18-0340, 18-0341, and 18-0342 collectively referred to as the “Municipal Court Actions”);

WHEREAS Claimants commenced a lawsuit in the District Court, Garfield County, Colorado, against the Town and Mr. Leybourne, captioned Tumbleweed Carbondale, LLC et al. v. Town of Carbondale et al., Case No. 2018CV30126 (the “Civil Action”);

WHEREAS, the Parties, without admitting any liability or fault, have agreed to settle and compromise all demands asserted in the Municipal Court Actions and the Civil Action in a manner set forth more fully in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth in the Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Dismissal of Actions.
A. Within 3 business days of receiving a fully executed settlement agreement, the Town shall voluntarily dismiss the Municipal Court Actions and any corresponding municipal citations with prejudice, each Party to pay its own costs and attorneys’ fees relating to the Municipal Court Actions.

B. Within 3 business days of receiving a fully executed settlement agreement, Claimants shall voluntarily dismiss the Civil Action with prejudice, each Party to pay its own costs and attorneys’ fees relating to the Civil Action.

2. **Warranty Regarding Civil Action and Municipal Court Actions.** Based on information currently known by the Town, the Town agrees that neither the Civil Action (including the facts and events giving rise to the Civil Court Action) nor the Municipal Court Actions (including the facts and events giving rise to the Municipal Court Actions) will be considered or relied upon in future decisions relating to the following: retail marijuana licensing applications submitted by Claimants; renewals of any retail marijuana licensing concerning Claimants; and/or sign permit applications submitted by Claimants.

3. **Approval of Signs.**

   A. The Town agrees to and approves the two signs attached hereto as Exhibit A and to allow Claimants to construct and display the signs depicted in Exhibit A. The Tumbleweed Dispensary sign (shown and identified in Exhibit A as “Sign 3”) has already been approved by the Town and installed by Claimants. Upon signing of this Agreement by all Parties, Signs 1 and 2 depicted in Exhibit A will be deemed approved by the Town, and Claimants need not take any further action to obtain approval of Signs 1 and 2 depicted in Exhibit A.

   B. The Town warrants that as of the date of this Agreement, Signs 1 and 2 depicted in Exhibit A comport with all relevant provisions of the Town of Carbondale Municipal Code assuming the illumination sources shall not exceed a total of 9,600 lumens.

   C. Nothing in this Agreement, including the Town’s approval of Signs 1 and 2 depicted in Exhibit A, is intended to waive, prohibit, limit, or otherwise compromise Claimants’ right to submit future sign applications to the Town of Carbondale. Similarly, nothing in this Agreement, including the Town’s approval of Signs 1 and 2 depicted in Exhibit A, is intended to waive, prohibit, limit, or otherwise compromise the Town’s right to modify, amend, or eliminate any relevant provisions of the Town of Carbondale Municipal Code.

   D. Further, nothing in this Agreement is intended to waive, prohibit, limit, or change the Town's requirement that Claimants must seek approval for new signage not depicted in Exhibit A, including but not limited to, signage for TWCHM which is not shown or depicted in Exhibit A and the requirement that Claimants comply with all applicable Code provisions at the time of application.
4. Businesses to be in and remain in Operation. Claimants agree that the signs depicted in Exhibit A are for businesses that are and will be in “operation” as defined by Town Code and that there is and will be dedicated space within Claimants’ building (shown in Exhibit A) for each business as long as the signs shown in Exhibit A are installed. This provision also includes businesses that are not yet in operation but may be at some time in the future, including but not limited to TWCHM.

5. Claimants’ Release of Claims. Claimants release the “Released TOC Parties” from the “Released TOC Claims.”

A. “Released TOC Parties” is defined to include: the Town and the Town’s assigns; current and former employees, including but not limited to Mr. Leybourne; agents; current and former elected and appointed officials; departments, including but not limited to the Planning Department; Boards & Commissions; successors or predecessors; attorneys; insurance carriers and self-insurance Pools, and each of their past and present members, directors, officers, employees, attorneys, agents, insurers, successors, and assigns.

B. “Released TOC Claims” is defined to include: any and all claims, damages, lawsuits, injuries, indemnities, reimbursements, liabilities, and causes of action that the Claimants may have, whether known to them or not, arising, directly or indirectly, out of the Civil Action or Municipal Court Actions, the events discussed in the Civil Action or Municipal Court Actions, any circumstances that are or might have been alleged in the Civil Action or Municipal Court Actions, and any other of the Released TOC Parties’ actions or omissions occurring before the signing of this Agreement.

C. It is understood and agreed that the Released TOC Claims includes all rights, claims, or appeals that may be asserted under any contract, by-laws, city ordinance or state, federal, or common law.

D. It is understood and agreed that the Released TOC Claims does not include any future claims that may arise under any contract, bylaws, city ordinance or state, federal, or common law based on acts or omissions that occurred after the date of the signing of this agreement.

6. The Town’s Release of Claims. The Town releases the “Released Tumbleweed Parties” from the “Released Tumbleweed Claims.”

A. “Released Tumbleweed Parties” is defined to include: Claimants and their parent, affiliate, and predecessor companies, and each of their past and present members, directors, officers, employees, attorneys, agents, insurers, successors, and assigns. Released Tumbleweed Parties specifically includes Daniel Griffin, Sherri Marzario, Adam Phillips, and Mark Smith.

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1 As part of the “operation” of separate businesses on the property Claimants must continue to provide separate access in accordance with Colorado Department of Revenue, Marijuana Enforcement Division, Retail Marijuana Rules, currently codified at 1CCR212-2.
B. "Released Tumbleweed Claims" is defined to include: any and all claims, damages, lawsuits, injuries, indemnities, reimbursements, liabilities, and causes of action that the Town may have, whether known to them or not, arising, directly out of the Civil Action or Municipal Court Actions, the events discussed in the Civil Action or Municipal Court Actions, or any circumstances that are currently known by the Town that might have been alleged in the Civil Action or Municipal Court Actions.

C. It is understood and agreed that the Released Tumbleweed Claims includes all rights, claims, or appeals that may be asserted under any contract, by-laws, city ordinance or state, federal, or common law.

D. It is understood and agreed that the Released Tumbleweed Claims does not include any future claims that may arise under any contract, bylaws, city ordinance or state, federal, or common law based on acts or omissions that occurred after the date of the signing of this agreement.

7. **Governing Law and Jurisdiction.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Colorado as now in effect. In the event of any disputes or controversies between the Parties that require resolution, such disputes or controversies shall be brought in any Colorado state court in which jurisdiction may be established.

8. **Authority.** Each Party expressly warrants and represents that he, she, or it has authority to enter into this Agreement, and to bind the respective Party that they are signing on behalf of, and that the person who signs on behalf of the Party has authority to do so.

9. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of each party. The Parties to this Agreement represent to the other that there are no other parties in interest with respect to the demands asserted herein or to the resolution of the matters set forth herein.

10. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. **Representation of Counsel.** All Parties to this Agreement have been independently represented by counsel, and have read and understand this Agreement. This Agreement has been drafted and negotiated between the Parties and contains work product of the attorneys for both Parties. Therefore, it is not to be construed strictly against any Party, but instead is to be construed fairly, according to the plain meaning of its terms.

12. **Attorneys' Fees.** The Parties agree that each will pay for its own costs, expenses and attorneys' fees that were incurred related to the Civil Action and the Municipal Court Actions, subject to the further terms set forth herein.

13. **Entire Agreement.** This Agreement sets forth the complete agreement between the Parties and prior agreements or terms which are not set forth herein are not part of this Agreement, and upon being fully executed, the Agreement shall be deemed final in all respects.
14. **Captions.** The underlined headings of this Agreement are for convenience only and shall neither constitute part of the Settlement Agreement nor be construed to amplify, limit, or otherwise affect the provisions herein.

15. **Severability.** Any provision of this Agreement this is prohibited or rendered ineffective by law shall be unenforceable between the Parties only to the extent of such prohibition or ineffectiveness without invalidating the remainder of the provision or of this Settlement Agreement, subject to the further terms set forth herein. To the extent any part of Paragraphs 1.A. or 3 of this Agreement are deemed unenforceable then this entire Agreement shall be deemed null and void, as Paragraphs 1.A. and 3 are the material provisions that induced the Claimants to enter into this Agreement.

16. **No Admission of Liability.** Each of the Parties understands and agrees that this Agreement and the settlement provided for herein are intended to compromise disputed claims and defenses, to avoid litigation and to buy peace, and that this Agreement and the settlement provided for herein shall not be construed or viewed as an admission by any Party of liability or wrongdoing, such liability being expressly denied. This Agreement, and the settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence or support a contention that any of the Parties acted illegally, improperly, or in breach of law, contract, or proper conduct.

IN WITNESS WHEREOF, the Parties have executed and entered into this Settlement Agreement on the date first written above.

The Town of Carbondale, Colorado

A Colorado Home Rule Municipal Corporation

By: [Signature]

Its: [Signature] ²

Tumbleweed Carbondale, LLC

By: [Signature]

Its: [Signature]

² Jay Harrington’s signature will be subsequently ratified by the Town Board at a regular public meeting.
TWCHM, LLC
By:
Its: CEO

Tumbleweed Property Management, LLC
By:
Its: CEO
EXHIBIT A

Exhibit A – Sign 1:

NEW ILLUMINATED CABINET SIGN
Exhibit A – Sign 2 and Sign 3:

ILLUMINATED CABINET
Top sign on existing posts: 3' x 8' D.
Bottom sign: 30” tall x 57” wide, Do
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Item No: 2  Attachment: I

Meeting Date: April 9, 2019

TITLE: South East Highway 133 Irrigation Project Contract Award

SUBMITTING: Parks & Recreation Department

ATTACHMENTS: Construction Contract, RFQ/RFP, Proposal and Bid from Rocky Mountain Custom Landscapes & Associates, Inc.

PURPOSE: Seeking Board of Trustees approval to award a contract the Rocky Mountain Custom Landscapes & Associates, Inc. to conduct the South East Highway 133 Irrigation Project.

BACKGROUND: The Parks & Recreation Department released an RFQ/RFP on March 7th, received inquiries from 4 landscaping firms, with two firms present at an on-site pre-submittal meeting on March 25th. We received two proposals by the March 28th deadline. Rocky Mountain Custom Landscapes & Associates, Inc gave us the lowest bid of $80,792.00. Following a meeting with representatives from Rocky Mountain Custom Landscapes & Associates, Inc. Town staff will be making a recommendation to accept their bid and award them the contract for the irrigation work.

RECOMMENDATION: Approval of the South East Highway 133 Irrigation Project construction contract with Rocky Mountain Custom Landscapes & Associates, Inc.

Prepared By: Eric Brendlinger, Parks & Recreation Director

Jay Harrington
Town Manager
CONSTRUCTION CONTRACT

(Guaranteed Fixed Price)

THIS AGREEMENT made this ___ day of ______________, 2019, between the Town of Carbondale, Colorado ("Town") and Rocky Mountain Custom Landscapes & Associates, Inc. ("Contractor").

Recitals

WHEREAS, the Town desires to replace the South East Highway 133 Irrigation system (the "Work"); and

WHEREAS, Contractor has submitted a fixed price unit price bid to the Town in the amount of $80,792.00 to perform the Work in 2019 (see addendum A & B); and

WHEREAS, the Town desires to accept this bid by Contractor and to authorize Contractor to proceed with this work subject to the terms and conditions of this contract.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The Contractor shall perform the Work for a fixed price of $80,792.00 ("Contractor’s Compensation"). The Town may terminate this contract should the total price materially exceed this sum unless the Town, in its discretion, determines to appropriate additional funds toward this project in 2019.

2. Thereafter, in consideration for Contractor’s performance of the Work pursuant to the plans and specifications, and subject to satisfaction of the Town and acceptance of the same by the Town, Contractor’s Compensation shall be payable to Contractor in monthly installments for Work completed, based on Applications for Payment submitted by Contractor and approved by the Town. Town shall make final payment for the Work to Contractor no later than thirty-one (31) days after the Work is completed and accepted by Town. It shall be a condition precedent to the payment of Contractor that Contractor submit waivers and assignments of liens and such other documents, papers and statements as may be requested by and all in a form reasonably acceptable to Town. Applications for Payment may include the cost of materials or equipment not yet incorporated in the Work but delivered and properly stored at the project site. Title to all equipment and materials shall pass to Town upon payment therefor or incorporation in the Work, whichever shall first occur, and Contractor shall prepare and execute all documents necessary to effect and perfect such transfer of title. Town may make checks for full and final payment, or for any progress payment, payable jointly to Contractor and any of its subcontractors, material suppliers, laborers or equipment suppliers, and the amount so paid will apply to the Contractor’s Compensation.

3. Contractor shall keep full and detailed accounts as may be necessary for proper financial
management under this Agreement. The Town shall be afforded access to all the Contractor's records relating to this Agreement or the Work.

4. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract nor contract with any subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Contractor has verified or attempted to verify through participation in the Basic Pilot Program that the Contractor does not employ any illegal aliens. (For the purpose of this paragraph, “Basic Pilot Program” is defined to mean the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security). If the Contractor is not accepted into the Basic Pilot Program prior to executing this contract, the Contractor shall apply to participate in the Basic Pilot Program every three months until the contractor is accepted or this contract has been completed, whichever is earlier. The Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this contract is being performed. This paragraph shall not be effective if the Basic Pilot Program is discontinued.

If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the contractor shall notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. The Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor shall also comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to C.R.S. 8-17.5-102(2).

10. All work performed by the Contractor shall be performed in a workmanlike manner, pursuant to industry standards and all applicable Carbondale Municipal Code provisions, and subject to Town's satisfaction and approval. The Contractor shall clean up all debris generated by its work and shall keep mud from the street and near the site. Contractor shall also perform as follows:

a. Contractor shall supervise and direct the Work, using Contractor's best skill and attention, and Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement. Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary to complete each Job in a workmanlike manner in strict accordance with the Contract
Documents. Contractor accepts the relationship of trust and confidence established between the Town and Contractor by this Agreement. Contractor represents, covenants and agrees to furnish efficient business administration and superintendence, to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of the Town.

b. Contractor warrants to the Town that all materials and equipment incorporated in the Work will be new unless otherwise specified in the Contract Documents, that all Work and materials will be free from faults and defects not inherent in the quality required or permitted under the Contract Documents, and that all Work and materials will be in conformance with the Contract Documents and all applicable requirements of local building codes and zoning requirements and all federal, state and local rules, regulations, orders, statutes and ordinances. Any Work not conforming to these requirements shall be considered defective. In addition, any professional and/or consulting services performed by Contractor in connection with the Work shall be performed by Contractor in accordance with the highest generally accepted national standards of care, skill, diligence and professional competence applicable to Contractor.

c. Contractor shall at all times keep the work site free from accumulation of waste, materials or rubbish caused by Contractor's operations and shall at all times maintain a neat and orderly work area as required by Town. At the completion of the Work, the Contractor shall remove all such waste, materials and rubbish from and about the Premises, as well as Contractor's tools, construction equipment, machinery and surplus materials. Contractor shall comply with any and all provisions of applicable law with respect to the transportation, handling, use, storage, disposal, removal and disposal of hazardous material, hazardous substances or hazardous waste in accordance with all applicable law or governmental regulations, including any governmental order or requirement for cleanup or remedial work arising out of Contractor's transportation, handling, use, storage or disposal of such hazardous materials on or about the Premises.

d. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to (a) all employees on the Work and other persons who may be affected thereby, (b) all the Work and all materials and equipment to be incorporated herein, and (c) other property at the site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. Where consideration of labor, equipment or safety is involved, Contractor is solely responsible for all decisions and Town shall not incur any liability as a result of Contractor's decisions.

e. All claims which Contractor has or wishes to assert against Town must be presented in writing to Town not later than ten (10) days after Contractor is aware or should have been aware that a claim will or does exist, or such longer time as may be required by law, even though the exact nature of the claim and the amount of the claim may not be determinable at that time. The nature of the claim and the amount of the claim must be presented to Town in writing as soon thereafter as Contractor has or should have had such information, and Contractor hereby waives all claims not presented as provided herein.

f. Upon request of Town, Contractor shall submit for Town's review and approval a
schedule ("Schedule") for the performance of the Work. When the Schedule is approved by Town, it shall not be exceeded by Contractor except as may be approved in writing by Town, provided however that, although time is of the essence, the Contractor shall not be responsible for delays caused by matters outside of Contractor's or its sub-contractors' control.

g. Contractor shall promptly pay all bills and charges for its materials, labor and other costs in connection with the Work and shall keep the project site and all improvements thereon free and clear of any liens, charges or claims of Contractor or its subcontractors, material suppliers, employees and agents. In the event a lien shall be filed in connection with the Work, Contractor shall, at its own cost, cause such lien to be discharged within ten (10) days from recordation of the lien. In the event Contractor fails to discharge the lien when required hereunder, Contractor shall be immediately liable to the Town and shall pay to the Town all costs, damages and losses incurred by the Town in connection with such lien, including but not limited to attorneys' fees, costs resulting from delay in closing sales, and the cost of bonds to release the lien. The Town of Carbondale is waiving the building permit fees for this project.

11. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ALL OTHER OWNERS OF LAND UPON WHICH THE WORK WILL OCCUR, AND THEIR RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITIees") FOR, FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, CLAIMS AND LIABILITIES RELATING TO BODILY INJURY OR PROPERTY DAMAGE), DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE WORK, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY CONTRACTOR OR ITS SUBCONTRACTORS TO PROPERLY PERFORM THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, OR NEGLIGENCE OR MISCONDUCT OF CONTRACTOR OR CONTRACTOR'S OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS.

12. Contractor will also obtain, pay for and maintain the coverage and amounts of insurance coverage not less than those below and will provide the Town with certificates issued by insurance companies satisfactory to Town to evidence such coverage prior to the commencement of any work, and upon renewal or change in any such policy. The Town shall be named as an additional insured on all such policies. Contractor will procure and maintain the following types of insurance at limits no less than stated below:

   a. Workers' Compensation complying with the laws of the State of Colorado and Employer's Liability Insurance in an amount not less than $1,000,000.00, as well as any similar coverage required for this work by applicable federal or state law.

   b. Comprehensive Automobile Liability Insurance in an amount not less than $1,000,000 combined single limit.
c. Commercial General Liability Insurance with an installation floater in an amount not less than $1,000,000 per occurrence, specifically insuring Contractor's indemnification obligation under this contract.

Each of the above-named policies shall be issued by an insurer acceptable to Town and be on a form satisfactory to Town, with exclusions and deductibles acceptable to Town, whose approval shall not be unreasonably withheld. The Workers' Compensation and Employer's Liability Insurance shall include a Waiver of Subrogation in favor of the Town. In addition, the Town shall be named as an additional insured on the Comprehensive Automobile Liability policy and the Commercial General Liability policy (by endorsement form number CG 20 26), which policies must provide coverage to the Town that is primary with respect to any other insurance carried by Town. Certificates of Insurance evidencing the above insurance coverage shall be furnished to Town before Contractor starts any Work. Policies shall be furnished to Town upon request. Insurance similar to that required of Contractor shall be provided by all subcontractors to cover their operations performed under this Agreement; provided, however, that the limits of such insurance may be adjusted in accordance with the nature of each subcontractor's operations. Contractor shall maintain Certificates of Insurance from all subcontractors, enumerating, among other things, the waivers in favor of, and insured status of, the Town, as required herein, and shall provide to Town a copy of each Certificate of Insurance from each subcontractor upon request.

13. The subcontracting of any of the Work shall not relieve Contractor of any of its liabilities or responsibilities under the Contract Documents. Contractor shall make prompt payment to its subcontractors for Work performed and/or materials supplied. Any retainage on payments due subcontractors shall be made only after Contractor consults with the Town and obtains the Town's prior written consent and approval.

14. Time is of the essence in this Agreement. Contractor shall expedite the Work and achieve completion within the time set forth in the Schedule, if any. Unless otherwise agreed in writing, all Work shall be completed in a timely manner.

15. Payment may be withheld by the Town on account of (1) defective Work not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) damage to Town or another contractor, or (5) failure to timely carry out the Work in accordance with the Contract Documents. The acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor in connection with the Work except those previously made in writing and identified by Contractor as unsettled on Contractor's final Application for Payment for the Work.

16. At the time of final payment for the work performed and the equipment and materials supplied pursuant to this agreement, the Contractor shall deliver to the Town a final lien waiver. Final payment shall be made only after the contract has been fully performed by the Contractor and the Town has accepted the work.

17. The Town may order changes in the Work consisting of additions, deletions or modifications, the Contractor's Compensation and time for completion being adjusted accordingly. All such changes in the Work shall be authorized by written Change Order signed by the Town. The Contractor's Compensation and time for completion may be changed only by
Change Order. Cost or credit to the Town from a change in the Work shall be determined by mutual agreement. No aspect of the Contract Documents provided after the date of this contract shall be deemed a change in the Work, unless the particular Contract Document represents a change in the scope of Work (including detail) which was not and could not have been reasonably inferred or anticipated by Contractor, as an experienced and prudent contractor.

18. In the event that either party hereto waives a breach of this agreement by the other party, such waiver shall not be deemed to be or be construed a waiver of any subsequent breach of the terms hereof.

19. Contractor shall promptly correct any Work found to be defective or as failing to conform to the Contract Documents within two years from the date of completion of the entire Work or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required under the Contract Documents. Contractor also guarantees all equipment, material, supplies, and work furnished on the job against defects for one year from final completion of the Work and guarantees that the Work shall be done in accordance with the Contract Documents. Contractor agrees, at its sole cost, to make all repairs and correct such defects under the warranty. Failure to correct such defects within the required time shall constitute a breach of this Agreement. Contractor expressly agrees that all warranties made by Contractor in this Agreement shall survive the termination of this Agreement and completion of the Work.

20. Termination.

a. If Contractor does not fully comply with the terms of this Agreement or the other Contract Documents, then the Town may, without prejudice to any other right or remedy and after giving Contractor seven (7) days prior written notice and opportunity to cure the breach, terminate the services of Contractor. The Contractor will have no responsibility for work performed by the Town or Carboudale Public Works employees.

b. The Town may also, at any time, terminate for its own convenience any part of the Work or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of Work to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If any part of the Work is so terminated, Contractor shall be entitled to payment for actual costs directly related to Work thereafter performed by Contractor in terminating such Work including cancellation charges of subcontractors and material suppliers, provided such Work is authorized by Town. In case of such termination, the Town will issue a Change Order making any required adjustment to the scheduled date of completion and/or the Contractor's Compensation for the Work.

c. In the event of termination, the Town may offset against any sum due Contractor under the Contract Documents the amount of any obligations of Contractor to the Town, whether or not arising out of this Agreement.

21. This agreement shall be construed, interpreted and governed by the laws of the State of Colorado. In the event that legal proceedings are instituted by either of the parties for enforcement of this agreement, such proceedings shall be brought in the Garfield County District
Court. The prevailing party in any such dispute shall be entitled to an award of reasonable attorneys’ fees and costs, including expert witness fees.

22. This agreement shall be binding upon the parties hereto, their partners, successors and assigns. This contract and the documents incorporated herein by reference constitute the entire agreement between the parties and may be altered, amended or repealed only by duly executed written agreement. Neither party will assign the contract without the written consent of the other. Contractor will not be relieved of any of the responsibilities of this contract by assigning or subcontracting the work or any portion thereof.

23. Contractor will keep records, including accounting records, relating to this project in a form acceptable to Town and will allow Town access to all records upon reasonable notice to Contractor to review and audit such records.

24. The Town has appropriated funds out of its 2019 budget in the amount of Contractor’s Compensation. Nothing in this contract shall be construed as a multi-year budgetary obligation, and any financial liability of the Town after 2019 shall be contingent upon future appropriations by the Town pursuant to the local government budgeting laws applicable within the State of Colorado.

CONTRACTOR:
Rocky Mountain Custom Landscapes & Associates, Inc.
1058 County Road 100
Carbondale, CO 81623
970-331-3555

By: ____________________________
President/Owners Representative

TOWN: TOWN OF CARBONDALE
Address:
511 Colorado Avenue
Carbondale, CO 81623

By: ____________________________
Dan Richardson, Mayor

ATTEST:

______________________________
Cathy Derby, Town Clerk

Attachments:
Addendum A: RFQ/RFP Language
Addendum B: Rocky Mountain Custom Landscapes and Associates, Inc. proposal and bid.
Town of Carbondale
Addendum A
RFP/RFQ Language

Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

REQUEST FOR QUALIFICATIONS & PROPOSAL
COVER SHEET

Date: March 6, 2019
Proposal Title: Carbondale South East HWY 133 Irrigation Project.
Proposals will be received until:
March 28, 2019
4:00 p.m., MDST
Town Hall
511 Colorado Avenue
Parks & Recreation Director’s Office
Carbondale, Colorado 81623

Deliverables:
2 copies of the qualification and proposal in a sealed envelope.

Goods or services to be delivered to or performed at:
Town of Carbondale

For more information please contact Eric Brendlinger:
970-510-1277 (office)
Email Address:
ebrendlinger@carbondaleco.net

Documents included in this package:
Request for Qualifications & Proposals Cover Sheet
Request for Qualifications & Proposals Document
General Town of Carbondale Irrigation Specifications

Appendix:
- Grand Junction Pipe Irrigation Layout (PDF attachment to e-mail or hard copy at Town Hall)
- Grand Junction Pipe Irrigation Notes
- Bid sheet
- Parts List

If any of the documents listed above are missing from this package, they may be picked up at Carbondale Town Hall, 511 Colorado Avenue, Parks & Recreation Department.
NOTICE OF REQUEST FOR QUALIFICATIONS & PROPOSALS

Carbondale, Colorado – Carbondale South East Highway 133 Irrigation Project

I. PROJECT OVERVIEW & OBJECTIVES

Background:

The intent of this REQUEST FOR QUALIFICATIONS & PROPOSAL is to obtain a qualified person, firm, or Corporation, hereafter referred to as "Contractor", to provide comprehensive professional services to construct and replace the existing and outdated irrigation system on the open space parcels on the south east side of Highway 133 within the CDOT right of way.

The Town of Carbondale intends to enter into a contract with the Contractor for construction services for the Carbondale South East Highway 133 Irrigation Project per Town agreement with CDOT to maintain this irrigation system. Specific services include, but will not be limited to: site analysis, cost estimating, construction timeline and post project as-built. The selected Contractor will be responsible for entering into a standard Town of Carbondale required contract.

The successful selected Contractor team will work with the Town of Carbondale Parks & Recreation Director, Eric Brendlinger, and the Public Works Director, Kevin Schorzman & Parks Foreman, Russell Sissom, to meet the needs of the irrigation project.

II. CARBONDALE SOUTH EAST HIGHWAY 133 IRRIGATION PROJECTS: SCOPE OF WORK

The selected Contractor will provide all construction services for this project to replace existing irrigation system. The Contractor will need to be versed in the public trail and open space irrigation planning processes and have the necessary experience to construct the proposed irrigation system. The project will include all materials, labor and equipment necessary to construct an irrigation system that can accommodate pedestrians, bike, and vehicular traffic on Highway 133 during construction. Project tasks include:

A. Project Start-up Meeting, Work Plan
   The scope of the project start up should contain the following items:
1. A proposed time-frame schedule and tentative meeting dates.
2. The work plan will be presented detailing work for the project. The work plan should include specific tasks, a description of the process, schedules and reviews to be completed.

B. **Proposal Guidelines and Considerations:**
Contractor is responsible for being familiar with the following factors/characteristics as they pertain to the site:
1. Vehicular, bicycle, and pedestrian access routes and options
2. Necessary or beneficial relationships to nearby surrounding facilities, neighborhoods, properties and future property improvements
3. Existing or required utilities
4. Topography Surface drainage
5. Vegetation
6. Change orders need to be detailed and approved prior to work
7. Production of as-built at completion of projects showing changes from original design.

C. **Construction services**
1. Complete all necessary contracts and required permits with the Town of Carbondale, including any permits or contractor licenses for subcontractors. Licensed electrician will be required for pump motor and controls.
2. Construct the irrigation system according to the construction documents, or similar design subject to approval by the Town with results matching original design utilizing commercial grade parts.
3. Designate a contact person who will communicate with Town during construction process and will provide updates as requested.
4. Complete closeout of the project including addressing punch list items. A written warranty consistent with the warranty terms included in the Contractor’s proposal shall be provided to the Town of Carbondale at the completion of the contract.

III. **CONDITIONS OF PROPOSAL SUBMITTAL**
All proposing Contractors shall comply with all conditions, requirements, and specifications outlined within this RFQ/RFP. Proposals should include all of the information requested in this RFQ/RFP and any additional data that the respondent deems pertinent to the understanding and evaluating of their proposal response. Failure to provide requested information or any significant deviation from what is requested within the RFQ/RFP will result in rejection of the proposal. The Town reserves the right to request clarification or additional information necessary to assist in the Town’s selection. A duly authorized official of the proposing Contractor submitting the proposal must sign the proposal. All aspects of the proposal shall be valid until June 20, 2019.
The Town will not reimburse the respondents to this RFP for any costs associated with the preparation and submission of said proposals or pre-bid meetings. The Town of Carbondale will not return proposals, or other information supplied to the Town, to proposing Contractors.

All proposals, and the materials submitted within the proposal, shall become the property of the Town of Carbondale. The Town shall have the right to use all ideas and adaptations of ideas contained in proposals received.

IV. EVALUATION OF QUALIFICATIONS & PROPOSALS & SELECTION CRITERIA

Proposals will be evaluated on the basis of the Evaluation Criteria noted herein. The evaluation will include a review of the Carbondale South East Highway 133 Irrigation project preliminary proposal submitted, including a lump sum amount for all aspects of the project. The Contractor selected for the award will be chosen on the basis of the apparent greatest benefit to the Town in regard to the Project. The Selection Committee will review the responses to the RFP and will rank the Contractors based on the criteria set forth in this section. The criteria that will be used to evaluate the proposals include, but are not limited to, the following, in no particular order of importance:

1. Qualifications and experience of the General Contractor firm as indicated by prior successful completion of similar irrigation projects.
2. Qualifications and experience of the key individuals who will be assigned to this project, particularly the project manager who will be the lead person on the project, as indicated by prior involvement in similar irrigation projects.
3. Ability of the General Contractor to self-perform the majority of the work.
4. Specific approach to the construction phasing of the irrigation project.
5. Demonstrated ability to complete project in a timely manner and within the proposed lump sum budget.
6. Detailed warranty information and quality of warranty.
7. Demonstrated understanding of the needs of the Town both in service cost and in the scope of the services offered for this commercial irrigation project.
8. Knowledge of project background, the importance of water efficiency needs and goals, site limitations and special considerations.
9. The degree to which the proposal matches the terms of the Request for Proposal.

The Town of Carbondale reserves the right to accept or reject any or all submittals received in response to this solicitation, with or without express reasoning. The Town also reserves the right to waive any informalities and/or minor irregularities in submittals received, as determined at the sole discretion of the Town of Carbondale. Finally, the
Town of Carbondale reserves the right to communicate with any bidders in order to clarify any aspect(s) of their submittals.

V. PROPOSAL SUBMITTAL REQUIREMENTS

All proposal responses submitted must address each of the following with all information as requested herein and any additional information necessary to summarize the overall benefit of the proposal to the Town of Carbondale. Please be advised that the greater the degree of specificity, the more likely it will be for the Town to review your responses favorably. Proposal submittal responses should include, but are not limited to, the following information.

A. Proposal Contact Sheet (page 2 of this document) that includes the name, mailing address, telephone, and email address of the Contractor. This letter shall be signed by the person having authority to make the proposal and who will be the person signing the formal contract with the Town. Either include within your proposal contact sheet (OR) attach to the sheet a complete description of your design/build team. Include the number of years you have been doing business and the prior experience you have had with similar contracts/agreements. Include information related to the prior experience your team has had with the construction of irrigation systems.

B. List of Previous Irrigation Projects. A narrative is needed that shows the firm’s understanding of the project scope and the tasks that need to be completed. Provide current contactable references. Include contact names, addresses, emails and telephone numbers of these professional references.

C. Project Budget: This proposal is to be lump sum price submittal, but actual billing and invoicing will be based on time, material and equipment costs for work performed to date. Existing system is presently sleeved under roads, potentially under bike path but condition is not known at this time. Parts list is provided, if alternate parts are used or proposed, they must be highlighted in the bid, commercial grade and would require approval if bid is accepted. In no case will billing exceed the lump sum price listed in the Contractor’s proposal, except for acceptable change orders approved by Town. All proposals shall include all pricing information relative to performing the work as described in the proposal.

1. An itemized schedule of time, material, parts and equipment rates that covers all anticipated project costs: i.e.—crew mobilization/living expenses, site preparation, equipment rental, construction, pricing for potential boring, pricing for potential street or path cuts, cleanup & closeout, landscaping and any other costs, etc.

D. Sub-Contracted Work performed by others (not performed by the Contractor) should be noted in list form within the above Project Budget.
E. **Timeline/Schedule** detailing the project milestones you would anticipate to reach by which date, outlining the specific tasks to be accomplished during the course of the project (i.e. mobilization, excavation, drainage mitigation, equipment installation, backfill, electricity infrastructure, system testing, as-built etc.).

F. **Warranty information and guarantees** from Contractor for this irrigation project.

G. **Any other optional information** deemed necessary or important to note by the proposing Contractor.

H. **Project Bid Sheet (part of the appendix of this document).** Lump Sum bottom line amount from your project budget.

I. **Please provide (2) Hard Copies of your proposal. One original and one copy to the following address in a sealed envelope. Can be mailed or hand delivered to front desk of Town Hall. Must arrive prior to deadline of Thursday, March 28th, 2019 4:00 pm**

Town of Carbondale  
ATTN: South East Highway 133 Irrigation Project Contractor RFQ/RFP  
C/O Eric Brendlinger, Parks & Recreation Director  
511 Colorado Avenue  
Carbondale, CO 81623

**VI. INSURANCE**  
If selected, the Contractor agrees to procure and maintain in force during the term of the contract the following coverage:

A. Worker's Compensation Insurance, as required by the Labor Code of the State of Colorado and Employer's Liability Insurance.

B. Commercial General or Business Liability Insurance ($2,000,000 minimum) with the Town of Carbondale listed as additional insured. Proof of automobile liability, general liability, and umbrella liability must be provided.

C. A Certificate of Insurance shall be completed by the Contractor's insurance agent(s) as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Town of Carbondale prior to the commencement of any services. The completed Certificate of Insurance will be filed with the Town Clerk.

**VII. OTHER REQUIREMENTS**  
The selected contractor will be responsible to provide all of the following items related to the Carbondale South East Highway 133 Irrigation Project construction as a part of their base proposal:
A. Verifications of existing conditions for conflicts prior to beginning work.
B. Verifications of site dimensions.
C. Details for techniques for material hauling, excavation, backfill and compaction according to Town irrigation specifications.
D. Unloading, hoisting and spotting of all materials supplied under the contract including the furnishing of any equipment required to do so.
E. Clean-up and disposal of trash on a daily basis into a contractor-supplied dumpster on-site, if deemed necessary by the Town.
F. Temporary fencing for contractor materials, equipment, and to secure the site from vandalism during construction, if needed as determined by the town.
G. Traffic control if working in the Highway 133 roadway or right of way and also on Town streets, paths, sidewalks and private driveways as determined by the Town and CDOT, in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

The Town of Carbondale will enter into contract negotiations with the highest ranked proposer. However, the Town of Carbondale reserves the right to terminate negotiations with that proposer at any time. The Town additionally reserves the right to negotiate or suspend with one or more proposers at any given time and to reject any or all of the proposers, should such action be deemed to be in the Town’s best interest. The Town of Carbondale will negotiate a fee for which the selected Contractor shall perform the Project Scope of Work, and the work shall be performed in accordance with the Town of Carbondale’s contract documents.

VIII. INQUIRIES
All inquiries relating to this RFP should be made to: Eric Brendlinger, Town of Carbondale Parks & Recreation Director, at (970) 510-1277 or at: ebrendlinger@carbondaleco.net
Irrigation specific technical questions- Contact Russell Sissom-Parks Foman (970) 510-1327 or at rsissom@carbondaleco.net

IX. PROJECTED TIMELINE FOR PROJECT
- Town of Carbondale release and post of the RFP
  March 7, 2019 *
- On-Site Pre-RFP Submittal Meeting: 1:30 pm
  (meet at parking lot of Hendricks Park)
  March 25, 2019
- RFP Submittal Deadline:
  March 28, 2019 at 4:00 p.m. *
- Evaluation of Proposals:
  March 29, 2019
- Interviews of firms (optional) if needed:
  April 2, 2019
- Approval of Award and Contract by Trustees:
  April 9, 2019 *
- Construction window April-May, 2019
  (Ditches on) *(System testing after this date)
  April 15th, 2019

Note: All dates without asterisk above are preliminary and are subject to change.
All dates with asterisk are fixed.
BID PROPOSAL

Town of Carbondale, Colorado
South East Highway 133 Irrigation Project Contractor RFQ/RFP

The undersigned bidder, in compliance with your request for bids for the South East Highway 133 Irrigation Project in Carbondale, Colorado, having examined specifications, related documents, and the site of the proposed project, hereby proposes to furnish the necessary irrigation system as described in the specifications of this RFQ/RFP. These prices are for all necessary materials, mobilization, labor and installation for a fully operational irrigation system and are to cover the specified equipment, installation, and delivery charges.

NAME OF CONTRACTOR: Rocky Mountain Custom Landscapes & Associates

LUMP SUM CONTRACT PRICE: $80,792.00

Amount in figures

Eighty Thousand Seven Hundred Ninety Two Dollars

Amount in Words

Warranty Period for the Irrigation System Equipment and Performance 1 year

Company Name: Rocky Mountain Custom Landscapes & Associates

Contact Name: Steve Bjornstrom

Authorized Signature: [Signature]

Date: 4-2-19

Address: 1058 County Road 100

City/State/ZIP: Carbondale, CO 81623

Telephone: 970.331.3555

E-mail: Steve@rmcllc-usa.com
**IRRGATION PROPOSAL PLANS PROVIDED BY GJ PIPE**

**Revision 1**

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<td>Qty.</td>
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<td>Cap - Future Tie-In</td>
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<td>SPECIALIZED MACHINERY</td>
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<td>Mini Excavator (digging)</td>
<td>Hrs.</td>
<td>40</td>
<td>$3,600.00</td>
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<tr>
<td>Skid-ster/Dingo (Trenching)</td>
<td>Hrs.</td>
<td>40</td>
<td>$3,460.00</td>
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<td>$10,761.00</td>
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**EXCLUSIONS**

*There is a one year warranty if RMCL maintains for first year.*  
*This proposal does not include repairs to existing Landscape or Irrigation.*  
*Access to site is open.*  
*Anticipated duration is approximately 3-4 weeks.*  
*Due to unknowns, asphalt patching provided by Town of Carbondale.*  
*Work beyond the scope of work shall be performed on a time and materials basis based upon the Unit Prices identified as described in the Contractor's submittal.*
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Item No: Consent Agenda

Meeting Date: April 9, 2019

TITLE: Annual Bike Park Maintenance Contract

SUBMITTING: Parks & Recreation Department

ATTACHMENTS: Maintenance contract and proposal.

PURPOSE: Seeking Board of Trustees approval for a fixed sum maintenance contract for the North Face Bike Park.

BACKGROUND: Each season after the winter snow melts the riding surface soil, jump ramps and pump tracks at the North Face Bike Park need maintenance. These features require a 60% sand-40% clay soil mixture overlay with qualified installers to bring the bike park into rideable shape. Brian Buell has the expertise to conduct this work and to perfect and finalize jump ramp angles and overall ride ability of the park. We conduct this work prior to our Bonedale Bike Jam competition in May, and have Brian come back throughout the season if needed.

RECOMMENDATION: Approval of the North Face Bike Park maintenance contract with Brian Buell

Prepared By: Eric Brendlinger, Recreation Center Manager

Jay Harrington
Town Manager
 AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT FOR PROFESSIONAL SERVICES is made effective the 25th day of__________ March__________, 2019, between the TOWN OF CARBONDALE, a municipality under the laws of the State of Colorado ("Town"), and__________ Brian Buell ___________ ("Contractor").

WITNESSETH:

In consideration of the mutual covenants and agreements herein contained, the parties hereeto agree as follows:

1. Scope of Agreement. Contractor agrees to provide North Face Bike Park maintenance services, as more fully identified in either:
   (a) The Contractor’s quote for services to be rendered, addendum attached

2. Consideration. The Town agrees to compensate Contractor for fees and services in an amount as established within the Contractor’s submittal for the scope of work identified. Work beyond the scope of work shall be performed on a time and materials basis based upon the Unit Prices identified as described in the Contractor’s submittal.

3. Term and Renewal. This Agreement shall be effective as of the date of its execution by both parties and shall extend until completion of the services identified in the Professional Services Agreement.

4. Status. Contractor is an independent contractor and shall not be considered an employee of the Town for any purpose.

5. Standard of Care. The standard of care applicable to Contractor’s work will be the same degree of care, skill, and diligence normally employed by contractors performing the same or similar work. Contractor will re-perform any work not meeting this standard without additional compensation. No other warranty, express or implied, is included in this Agreement or in any drawing, specification, or opinion produced pursuant to this Agreement.

6. Indemnity. Contractor shall hold harmless and indemnify the Town from and against any damages awarded against the Town, or incurred by the Town in defense of any claim (including reasonable attorneys’ fees, costs or expert witness fees), related to the professional negligence or intentional wrongful conduct of Contractor or its officers, employees and agents.
7. **Insurance.** Contractor will obtain, pay to maintain the coverage and amounts of insurance coverage not less than those below and will provide the Town with certificates issued by insurance companies satisfactory to the Town to evidence such coverage prior to the commencement of any work, and upon renewal or change in any such policy. The Town shall be named as an additional insured on all such policies. Contractor shall procure and maintain the following types of insurance at limits no less than stated below:

   a. Workers’ Compensation complying with the laws of the State of Colorado and Employer’s Liability Insurance in an amount not less than $1,000,000.00, as well as any similar coverage required for this work by applicable federal or state law.

   b. Comprehensive Automobile Liability Insurance in an amount not less than $1,000,000.00 combined single limit.

   c. Commercial General Liability Insurance with an installation floater in an amount not less than $1,000,000.00 per occurrence, specifically insuring Contractor’s indemnification obligation under this contract.

8. **Governmental Immunity/TABOR/Immigration Compliance.** Nothing herein shall be interpreted as a waiver of governmental immunity to which the Town would otherwise be entitled under § 24-10-101, et seq., C.R.S., as amended. This contract is also contingent upon annual budgeting by the Town of Carbondale nothing in this contract shall be construed as a multi-year financial obligation of the Town. Contractor also agrees to be bound by the terms of Addendum A as related to compliance with Colorado immigration laws, which Addendum is incorporated by reference.

9. **Employees, Subcontractors and Assignees.** The providing of North Face Bike Park maintenance work required under paragraph 1 of this Agreement shall be the responsibility of Contractor. Contractor may employ or subcontract with additional persons to assist in the performance of this Agreement. Supervision and payment of any such persons shall be the sole and exclusive responsibility of Contractor. Notwithstanding the foregoing, however, this Agreement shall not be assigned by Contractor to a third party without the prior express written consent of the Town.

10. **Termination.** If at any time the Town is dissatisfied with the services of Contractor for any reason whatsoever, the Town may terminate this Agreement effective immediately upon the delivery of written notice to Contractor. In the event of any such termination, the Town shall pay Contractor for services rendered to the date of termination.

11. **Agreement Administration and Notice.** For purposes of administering this Agreement, the Town Manager hereby appoints Eric Brendlinger, Carbondale Recreation Manager, to represent the Town in carrying out the purposes and intent of this Agreement.

12. **Responsibilities.** Contractor shall be responsible for all damages to persons or property caused by the Contractor, its agents, employees or sub consultants, to the extent caused by its negligent acts, errors and omissions hereunder.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the written mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

14. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Venue for any action instituted pursuant to this agreement shall lie in Garfield County, Colorado.

15. **Authority.** Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

16. **Attorneys’ Fees.** Should this Agreement become the subject of litigation between the Town and Contractor, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys’ fees and expert witness fees. All rights concerning remedies and/or attorneys’ fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this 26th day of ______________, 2019.

TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By: ________________
Eric Brendlinger, Parks & Recreation Director

CONTRACTOR

By: ________________

Legal\Contract\Contractor Agreement form
Page 3
Town of Carbondale
Addendum A to Professional Services Agreement

Work By Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., et. seq., as amended, Contractor warrants, represents, acknowledges, and agrees that:

1. Contractor does not knowingly employ or contract with an illegal alien.

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

3. Contractor has participated in or attempted to participate in the basic pilot employment confirmation program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, “Basic Pilot Program”) in order to confirm or attempt to confirm the employment eligibility of all employees who are newly hired for employment in the United States. If Contractor is not accepted into the Basic Pilot Program prior to entering into this Agreement, Contractor shall forthwith apply to participate in the Basic Pilot Program and shall submit to the Town written confirmation of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in the Basic Pilot Program, and shall confirm such application to the Town in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph 3 shall be null and void if the Basic Pilot Program is discontinued.

4. Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:

   (a) notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

   (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.

7. If Contractor violates this Addendum, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

CONTRACTOR

By: ____________________________

Dated: 3/25/2019
Brian Buell  
PO Box 341  
Carbondale, CO 81623  
(720)530-9709  

25 March 2019  

Dear Eric Brendlinger  
Town of Carbondale  

This information provided summarizes the project estimate for work to be done at North Face Bike Park, Carbondale CO 81623.  

All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices.  

Please review this information and let me know if you have any questions.  

<table>
<thead>
<tr>
<th>Job</th>
<th>Maintenance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>25 March 19</td>
</tr>
<tr>
<td>Bid Amount</td>
<td>$2,112.00</td>
</tr>
</tbody>
</table>

43 total hours @ 40/hr = $1720  

Plate Compactor 1 week rental = $200  

10% contingency = $192  

Spring Rebuild Total Cost = $2,112  

Additional details  
- **Dirt Jumps** - 19 hours  
- *19 features  
- +15 jumps
+ 3 berms
+ 1 roller Section

- Large Pumprack - 14 hours
*14 features
+ 7 berms
+ 7 roller sections

- Small Pumprack - 10 hours
*10 features
+ 5 berms
+ 5 roller sections

Any alteration or deviation from above specifications that involve extra cost will be done upon a written change order over and above this estimate. This is to include but not limited to hidden damages which are uncovered during the course of the project, the unforeseen and additional work.

RESPONSIBLE PARTY:
Person, persons or companies (contractors) signing this contract are responsible for all payments in a timely manner. It is not the responsibility of Brian Buell to contact persons for payment that have not signed this contract.

PAYMENT:
A 50% deposit is required for all work prior to initiating project. This includes any additions or changes, which must also be noted and signed. The balance is due in full upon the completion of the project unless other arrangements have been made and are noted on this contract. Brian Buell will not refund any money for materials that have been ordered.
HOURLY CHARGES:
All hourly maintenance work will be charged out @ $40.00

EXAMPLES OF HOURLY WORK:
- On and off tread rebuilding
- On and off tread resurfacing manually and machine
- Manually moving material
- Implementing drainage mechanisms
- Feature testing

BY SIGNING THIS PROPOSAL YOU ARE IN FULL AGREEMENT AND UNDERSTANDING OF ALL TERMS AND CONDITIONS.

Brian Buell WILL NOT START OR SCHEDULE ANY PROJECT UNTIL A SIGNED COPY OF THE CONTRACT IS RETURNED WITH THE DEPOSIT.

Thank you for your time and consideration to work with me.

Sincerely,

Brian Buell

Payment Schedule
Deposit 50% $1,056
Final 50% $1,056

Owner: [Signature]

Contractor: [Signature] Brian Buell 13 Apr 2018
Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Brian David Buell

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes:

☐ Individual/sole proprietor or single-member LLC  ☐ C Corporation  ☐ S Corporation  ☐ Partnership  ☐ Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership)

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

Address (number, street, and apt. or suite no.) See instructions.

445 N 8th St

City, state, and ZIP code

Carbondale, CO 81623

List account number(s) here (optional)

Part I

Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter.

Social security number

524 59 294

Employer identification number

Part II

Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶ Brian Buell

Date ▶ 3/25/2019

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (pocceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1099-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What Is backup withholding, later.
CERTIFICATE OF LIABILITY INSURANCE
American Family Insurance Company [ ]
American Family Mutual Insurance Company, S.I. If selection box is not checked.
6000 American Parkway Madison, Wisconsin 53783-0001

Attended's Name and Address
Brian Buell
445 N 8th St
Carbondale, CO 81623

Agent's Name, Address and Phone Number (Ag/Dis)
Ryan W. Slaughter Agency, Inc
601 OGDEN ST
DENVER, CO 80218
(303) 444-1009 (933/302)

This certificate is issued as a matter of information only and confers no rights upon the Certificate Holder.
This certificate does not amend, extend or alter the coverage afforded by the policies listed below.

COVERAGES
This is to certify that policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

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<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY DATE</th>
<th>LIMITS OF LIABILITY</th>
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<td>04/11/2019</td>
<td>Bodily Injury &amp; Property Damage</td>
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<td>Each Occurrence $000</td>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / RESTRICTIONS / SPECIAL ITEMS

CERTIFICATE HOLDER'S NAME AND ADDRESS
Town of Carbondale
511 Colorado Ave
Carbondale, CO 81623

CANCELLATION

[ ] Should any of the above described policies be cancelled before the expiration date thereof, the company will endeavor to mail (" days) written notice to the Certificate Holder named, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives. 20 days unless different number of days shown.

[ ] This certificate coverage on the date of issue only. The above described policies are subject to cancellation in conformity with their terms and by the laws of the state of issuance.

DATE ISSUED
03/28/2019

AUTHORIZED REPRESENTATIVE
Hannah Pickrell Hawkins
PROCLAMATION
ARCHITECTURE MONTH

WHEREAS, we are shaped to great extent by our built environment—buildings, public spaces, streetscapes, and the interaction with our natural and unique environment through thoughtful planning, design, and careful stewardship of our state’s land and water resources and

WHEREAS, an essential element of the Town of Carbondale character is the quality of its architecture created in collaboration with architects of the past and the present and

WHEREAS, The American Institute of Architects (AIA) Colorado West Section dedicated to fostering design excellence by local architects and inspiring the next generation of design professionals through events such as Architecture Month; and

WHEREAS, Architecture Month is intended to celebrate the importance of architectural design in people’s everyday lives, and impacts how we live, work, play, and preserve our natural resources for future generations.

NOW, THEREFORE, I, by the power vested in me as Mayor of the Town of Carbondale, do hereby proclaim April, 2019 as

“COLORADO ARCHITECTURE MONTH”

in the Town of Carbondale and urge all citizens to recognize and support the valuable and important contributions of architectural design in our community.

INTRODUCED, READ AND ADOPTED, this 9th day of April, 2019.

ATTEST:

Dan Richardson, Mayor

Cathy Derby, Town Clerk
To: Mayor Dan Richardson and  
Carbondale Board of Trustees

From: Gene Schilling  
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for Veterans Expedition on April 20, 2019 at The  
Third Street Center

Date: March 13, 2019

I have found no records that would cause me to recommend denial of this liquor license  
special event application to serve alcohol at the Veterans Expedition at The Third Street Cen-  
ter on April 20, 2019.

Nick Watson  Event Manager

I recommend approval of this liquor license.
TOWN OF CARBONDALE
APPLICATION FOR A SPECIAL
EVENTS PERMIT

IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NON-PROFIT

AND ONE OF THE FOLLOWING:

- SOCIAL
- ATHLETIC
- FRATERNAL
- CHARTERED BRANCH, LODGE OR CHAPTER
- PATRIOTIC
- OF A NATIONAL ORGANIZATION OR SOCIETY
- POLITICAL
- RELIGIOUS INSTITUTION

TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:

- MALT, VINOUS AND SPIRITUOUS LIQUOR $50 PER DAY

LIQUOR PERMIT NUMBER

STATE SALES TAX NUMBER (REQUIRED)

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE

Veterans Expeditions

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY

P.O. Box 476
Salida, CO 81201

3. ADDRESS OF SPECIAL EVENT

520 South Third St.
Carbondale, CO 81623

NAME

DATE OF BIRTH

EMAIL ADDRESS

PHONE NUMBER

4. PRES/SECY OF ORG. OR POLITICAL CANDIDATE

Nick Watson

5. EVENT MANAGER

Nick Watson

6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR?

X NO

STATE LIQUOR OR BEER CODE?

X NO

YES TO WHOM?

7. IS PREMISES NOW LICENSED UNDER

TO BE LICENSED?

X NO

YES HOW MANY DAYS?

LIST BELOW THE EXACT DATES(S) FOR WHICH APPLICATION IS BEING MADE FOR PERMIT

Date

4/28/19

Date

4/28/19

Date

4/28/19

Date

4/28/19

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

SIGNATURE

Nick Watson

DATE

3/4/19

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 12, Article 48, C.R.S., as amended.

THEREFORE, THIS APPLICATION IS APPROVED.

SIGNATURE

DATE

LOCAL LICENSING AUTHORITY

ATTEST
March 1, 2019

Approval to apply for liquor license from Town of Carbondale for event at Third Street Center

Veterans Expeditions has rented our Community Hall for an event on April 20, 2019 from 5:00pm to 10:00pm. They have our permission to apply to the Town of Carbondale for special event liquor license for that event. All liquor consumption must stay within Community Hall and should not be in any other part of the building. We will coordinate security for the event and building.

Sincerely,

Colin Laird
Director
Third Street Center
970-963-3211 x3
colin@thirdstreetcenter.net

A community place promoting inspiration, sustainability and creative exchange

520 South Third Street, Carbondale, CO 81623
www.thirdstreetcenter.net
OFFICE OF THE SECRETARY OF STATE OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Veterans Expeditions Inc

is a Nonprofit Corporation formed or registered on 04/25/2014 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20141267775.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/07/2019 that have been posted, and by documents delivered to this office electronically through 03/13/2019 @ 08:28:12.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/13/2019 @ 08:28:12 in accordance with applicable law. This certificate is assigned Confirmation Number 11447885.

**********************End of Certificate**********************

Notice: A certificate issued electronically from the Colorado Secretary of State’s Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State’s Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate’s confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us click “Businesses, trademarks, trade names” and select “Frequently Asked Questions.”
To: Mayor Dan Richardson and Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for Festival Las Americas by Roaring Fork Rotary Foundation to be held on May 4, 2019 at Sopris Park.

Date: April 2, 2019

I have found no liquor violation records that would cause me to recommend denial of this liquor license special event application to serve alcohol at the Festival Las Americas, May 4, 2019 at Sopris Park.

Jen Quevedo / Representative

I recommend approval of this liquor license.
TOWN OF CARBONDALE
APPLICATION FOR A SPECIAL EVENTS PERMIT

IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NON-PROFIT AND ONE OF THE FOLLOWING:

- SOCIAL
- FRATERNAL
- PATRIOTIC
- POLITICAL
- ATHLETIC
- CHARTERED BRANCH, LODGE OR CHAPTER
- OF A NATIONAL ORGANIZATION OR SOCIETY
- RELIGIOUS INSTITUTION
- PHILANTHROPIC INSTITUTION
- POLITICAL CANDIDATE
- MUNICIPALITY

TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR:

- MALT, VINOUS AND SPIRITUOUS LIQUOR $50 PER DAY
- FEMENTED MALT BEVERAGE (3.2 BEER) $10 PER DAY

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE

   ROARING FORK PARTY CLUB

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY

   P.O. BOX 2271
   GLENWOOD SPRINGS, CO

3. ADDRESS OF SPECIAL EVENT

   SORRIS PARK

NAME  DATE OF BIRTH  EMAIL ADDRESS  PHONE NUMBER

4. PRESIDENT OF ORG. OR POLITICAL CANDIDATE

   TEN O'HERO

5. EVENT MANAGER

   TEN O'HERO

6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR?
   - NO
   - YES
   - HOW MANY DAYS?

7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE?
   - NO
   - YES
   - TO WHOM?
   - HOW MANY DAYS?

8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED?
   - NO
   - YES

LIST BELOW THE EXACT DATES(S) FOR WHICH APPLICATION IS BEING MADE FOR PERMIT

<table>
<thead>
<tr>
<th>Date</th>
<th>Hours From</th>
<th>Hours To</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/15/19</td>
<td>12:00 PM</td>
<td>9:00 PM</td>
</tr>
</tbody>
</table>

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

SIGNATURE  TITLE  DATE

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 12, Article 48, C.R.S., as amended.

THEREFORE, THIS APPLICATION IS APPROVED.

SIGNATURE  TITLE  DATE

LOCAL LICENSING AUTHORITY  ATTEST
Food vendors

Non-food vendors

Trash boxes + recycle boxes throughout the park

Non-food vendors

 smoking area

Bear Creek

Fence

Map data ©2019 Google 50 ft

https://www.google.com/maps/place/Sopris+Park/@39.3997007,-107.21..
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Carbondale Rotary Foundation, Inc.

is a Corporation

formed or registered on 04/13/2001 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20011076231.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/25/2019 that have been posted, and by documents delivered to this office electronically through 03/27/2019 @ 16:25:10.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/27/2019 @ 16:25:10 in accordance with applicable law. This certificate is assigned Confirmation Number 11478590.

Secretary of State of the State of Colorado

**************************************************************End of Certificate**************************************************************

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March 27, 2019

Sopris Park special event management plan for the 2019 Festival Las Americas

Sunday, May 5th, 2019

Special Event Liquor License BOT review on Tuesday, April 30th, 2019

Review, comments, concerns and signatures needed. After you sign please place in subsequent staff’s box.

If you have any pressing concerns about this event please contact me and contracts can be amended to address those concerns.

Eric Brendlinger  Carbondale Parks & Recreation Director

ebrendlinger@carbondaleco.net

www.carbondalerec.com

970-510-1277 (O)  970-319-2494 (cell)

[Signatures]

Parks & Recreation Director
Public Works Director
Police Chief
Town Manager
Town Clerk
TOWN OF CARBONDALE
PARK (OR) STREET RENTAL USE AGREEMENT/
SPECIAL EVENT MANAGEMENT PLAN

Completing this Park (or) Street Rental Use Agreement and Special Event Management Plan is required for large special events that will impact the Carbondale community. The purpose is to assist the Event Organizer in planning their special event so that it meets the requirements established by the Town of Carbondale. This Rental Use Agreement & Special Event Management Plan should be submitted 45-60 days prior to the event. After review by town staff, you will be notified if the event is approved, denied, or if additional information and/or a meeting with town staff is needed.

SECTION 1 - EVENT SUMMARY:

1. NAME OF EVENT: Cinco de Mayo/Festival Las Americas

2. Primary Event Organizer: Jen Quevedo
   a. Cell Phone: 970-319-4531
   b. Email: equevedo@gmail.com
   c. Address: PO Box 2871, Glenwood Springs, CO 81602

3. Secondary Event Organizer: Chris Pooley
   a. Cell Phone: 970-306-2755
   b. Email: cpooley2009@gmail.com
   c. Address: P.O. Box 5130, Avon, CO 81620

4. EVENT LOCATION: Scopris Park

5. EVENT DATE(s): May 5, 2019

6. EVENT TIME(s): Noon to 9:00 pm

7. EVENT SET-UP TIME(s): 10 am to noon. Will have amplified music during setup.

8. EVENT BREAK-DOWN TIME(s): 9:00 to 10:30.
   Procedures must be in place to avoid neighborhood noise disturbance with event break-down. Breakdown within town parks must end at 10:30 pm; and Downtown breakdown at 11:30 pm

SECTION 2 - EVENT SUMMARY INFORMATION:

1. Approximate number of people expected to attend event: 1500

2. Approximate Event Personnel Numbers:
   a) Event Staff Leaders/Committee Organizers in charge: 10
   b) Event Volunteers: 25
   c) Event Contractors: 5-10
   d) Event Security Personnel: 1-2 based on crowd size
   e) Event Vendors: 5-10

3. Event training for personnel? (Y) ☑ (N) ☐
   Describe? Tips training for servers. All food vendors will have licenses.
4. Fee charged to participants? (Y) [ ] (N) [ ]
   If yes, how much? Fee for venue: [ ]

5. Amplified music at event? (Y) [ ] (N) [ ]
   If yes, times music is played (including sound checks)
   10am to 9pm
   Note: Amplified sound cannot exceed 90 decibels which event organizer is responsible to monitor.
   Amplified music must be approved by Board of Trustees; Music beyond 9 pm requires Trustee approval.

SECTION 3 – EVENT SITE PLAN (OR PARADE/RACE ROUTE) MAP:
Please provide an accurate detailed drawing or map depicting physical layout of event that includes the following.
Must initial each requirement or write N/A (Not Applicable).

1. Boundaries
   o Delineate the boundary for the entire event venue, including the names of all streets or areas
     that are part of the venue and surrounding area: Attached
   o If the event involves a moving route of any kind, show the particular route, indicate the
     direction of travel, label street names, and identify any street closures: N/A
   o Locate fencing, barriers/barricades, points of ingress/egress, emergency access: Attached

2. Site Improvements
   o Location of stage, tents, canopies, booths, bleachers, other temporary structures: Attached
   o Location of generators, electricity sources, speakers, soundboards, lighting: Attached
   o Location area for trailers, trucks, or other event vehicles: Attached
   o Identify start & finish area (if a race): Attached

3. Security, Medical and Safety
   o Show security check points: Attached
   o Show placement of traffic control personnel: N/A
   o Locate first aid station, ambulance access point: Attached
   o Locate portable night lighting: N/A

4. Transportation and Parking
   o Identify all parking areas (on/off site): Attached
   o Locate any drop-off/pick-up areas: Attached

5. Sanitation and Solid Waste
   o Locate/identify restrooms/portal-toilets and hand wash stations: Attached
   o Locate trash and recycle containers and dumpsters: Attached

6. Alcohol, Food Service, Vending Booth Areas
   o Locate bar/beer garden area, with location of security fencing and entry/exit gates: Attached
   o Location of food service vendor booths: Attached
   o Location of merchandise vendor booths; information and/or demonstration booths: Attached

7. Smoking Area
   o Public special events on town parks/streets are non-smoking, unless area is designated: Attached

SECTION 4 – SECURITY PLAN:
Please describe your plan to provide a safe and secure environment (required if dispensing alcohol).

1. Have you hired a professional security company to manage event security? (Y) [ ] (N) [ ]
   If Yes, please provide the following information:
   o Name of Security Company: ACE Security & Safety LLC
   o Person in charge at event: Erick Gutierrez, President; Kevin Fontana, Operations Manager is alternate
   o His Cell Phone contact at event: 970.393.3451 Erick; 719.293.5152 Kevin
2. Will Town of Carbondale Police Dept. enforcement services be requested? (Y) (N)
   If Yes, please provide the following information:
   List purposes (security; traffic/parking control; event walk-thru):
   List # of officers & times when needed:
   Town law enforcement services charged out at Town cost in an agreement with Chief of Police, who has right to place officers as deemed necessary in the best interest of public safety.

SECTION 5 – MEDICAL & EMERGENCY SERVICES PLAN:
Please describe your medical and emergency services plan.

1. Will emergency medical services be summoned through 911? (Y) (N)
   If Yes, please provide the following information:
   Name & cell phone of on-site staff designated as medical point of contact: Jen Quevedo 970-319-4531

2. Will a licensed Emergency Medical Service provider or EMT be provided on-site? (Y) (N)
   If Yes, please provide the following information:
   Name & cell phone of service provider or EMT:
   Aid Station location & hours:

SECTION 6 – TRANSPORTATION & ROAD CLOSURE TRAFFIC MANAGEMENT CONTROL PLAN:
Required of events involving a road closure. Main Street closure requests require 4-6 months notification to obtain approval. Event organizers must submit an aerial drawing or map, showing event location, along with the following information shown on the drawing or map. Must initial each section.

- Road and/or traffic lane closure request: (Y) (N)
- Location of barricades and/or traffic cones: Attached
- Proposed traffic flow map around road closure: Attached
- Location of informational signage within road closure area: Attached
- Location of safety lighting bar (if needed) within road closure area: N/A
- Running or Bike Race route description (with start & finish line) if applicable: N/A
- Parade route description (with start & finish) if applicable: N/A

With this information the Public Works Director will determine a “traffic control plan” and will indicate the required road closure barricades and road detour signage needed for the event. If equipment is supplied by the Town, it will be provided at Town cost in covering staff expenses on delivery/pickup and setup/takedown. Deposit on Town equipment may be required. At the Town’s discretion, to save expenses, Event Organizer may be requested to set up/take down and safely secure the road closure barricades and signage before and after their event with instructions from the Town. Cost to the event organizer will be determined after review of your event road closure request. If a street must be posted “No Parking” by the Town, the cost is $5.00 per side of block. If it’s determined by the Public Works Director that the Town is unable to provide a “traffic control plan,” it may be required that the Event Organizer obtain a plan from a certified traffic control specialist. If the Public Works Director determines that the Town lacks the necessary barricades and signage due to scope and size of road closure (with limited inventory available), it may be required that Event Organizer contract all or a portion of their road closure traffic control management need services with a privately owned traffic control company.
SECTION 7 – REFUSE/TRASH PLAN:
Event organizer shall provide for the pickup and removal of all refuse/trash and recyclable materials, both on and off event site, which results from hosting the event. Throughout the duration of the event and immediately upon conclusion, the park and/or street area must be returned to a clean condition (no later than 10:00 am the next day following event). Event organizer may use Town trash receptacles available within the event area, but will need to provide additional containers at their expense, either by hiring a trash contractor who provides appropriate containers, providing their own containers, or provide a refuse removal plan that prevents the accumulation and overflow of refuse from containers provided by the Town.

Failure to perform adequate cleanup, or if damage occurs to public property due to event, and mitigation attempts fail, event organizers will be billed at full Town cost recovery rates for cleanup and repair. In addition, such failure may result in denial of future special event approval.

Event organizer is encouraged to consider a refuse/trash recycling plan for your event. Event organizer is further encouraged to consider creating a “Green” Event. These services can be provided for a fee by local companies. If using a contracted company please provide the following:

- Name of Service Provider: Mountain Waste
- Contact Person: Jeremy Freas
- Mailing Address: 1058 Co Rd 100, Carbondale, CO 81623
- Cell Phone: [_________] Email: jeremy.freas@mountainwaste.com

SECTION 8 - PORTABLE RESTROOM PLAN:
Event organizer shall provide portable restroom facilities unless you can show the sufficient availability of both ADA accessible and non-accessible facilities in the immediate area of the event. Please make sure these facilities are shown on your site plan. Portable toilets shall be removed from event site by 11:00 am the next day following event. Event organizer is responsible for keeping both portable toilets and park bathrooms clean, unplugged, and stocked with toilet paper from beginning to end of event. Multiple day events may require portable toilets to be pumped out daily. Please use the formula below to figure out your event’s porta potty needs.

<table>
<thead>
<tr>
<th>Duration of Event and number of Portable Toilets needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Participants</td>
</tr>
<tr>
<td>1 hr</td>
</tr>
<tr>
<td>50</td>
</tr>
<tr>
<td>100</td>
</tr>
<tr>
<td>250</td>
</tr>
<tr>
<td>500</td>
</tr>
<tr>
<td>1,000</td>
</tr>
<tr>
<td>2,000</td>
</tr>
</tbody>
</table>

Do you plan to provide portable restroom facilities at your event? (Y) [✓] (N) [ ]
If yes, how many: 4
Number of ADA accessible portable toilets: 1
Is portable handwashing station being provided? (Y) [✓] (N) [ ]
If no, is there a sanitizer dispenser within toilet? \((Y)\) \((N)\)

Please provide the following information regarding event portable restroom provider:

- Name of Service Provider: Mountain Waste
- Contact Person: Jeremy Free
- Mailing Address: 1058 Co Rd 100, Carbondale, CO 81623
- Cell Phone: Email: jeremy.frees@mountainwaste.com

SECTION 9 – ALCOHOL MITIGATION PLAN & PERMIT REQUIRED:
Responsible sale and/or distribution of alcohol is critical to a safe and successful event. A Town of Carbondale Liquor License Special Event permit application (fee: $50.00 payable to: Town of Carbondale) must be obtained from the Town Clerk, and submitted and approved by the Board of Trustees to sell alcohol (beer & wine) at your event. Only an incorporated non-profit organization is eligible for obtaining a special event liquor permit. The special event permit you receive will prohibit the consumption of alcohol outside of a controlled area or beer garden.
Liquor liability coverage with a $1,000,000 limit must be included on your certificate of insurance (also naming the Town as additionally insured). You must submit your special event liquor license application to the Town Clerk at least 30 days prior to your event. Applications submitted to the Town will require a hearing before the Town Trustees. Event Organizer must post a notice at event site 10-days prior to hearing before Town Trustees. Town Clerk will schedule hearing and provide notice board to be posted by event organizers.

If your event is going to involve the sale and/or distribution of alcoholic beverages, please provide the following information:

- Hours of operation of event (include dates & times): Noon until 9:00pm
- Alcohol service times: Noon until 9:00pm (required ending is 15 minutes prior to event shutdown, although 30 minutes prior is recommended)
- A designated fenced-in or secured area for the dispensation and consumption of alcoholic beverages is required. Show this area on your site plan and describe measures taken to secure the area: Attached
- Must provide non-transferable ID bands/bracelets for persons 21 and over (Describe your process for identifying legal vs underage patrons): ACE security will assist volunteers to wristband patrons over 21 in the beer garden.
- Describe how TIPS trained servers will monitor alcohol consumption and intoxication: TIPS trained servers will monitor alcohol consumption and intoxication in accordance with TIPS training protocol.
  (Note: Servers should not consume alcohol while working a shift, and should not return to shift if they consumed alcohol)
- Describe how Security staff and/or event server volunteers will provide friendly intervention to individuals who appear intoxicated: Event volunteers will provide friendly intervention to individuals who appear intoxicated in accordance with TIPS training protocol. Security staff will do the same. Intervention may include making sure they are not driving, calling a taxi if necessary, recommending they eat food and refrain from more alcohol consumption.
- Consider (but not required) designating a “family friendly” seating area. If included, describe the location and include on site plan: Under the gazebo
Will event provide alternative beverages to alcohol? If so, what? Water sodas and juice drinks.

Will food be available at all times? If so, what? Tacos and other Mexican food will be available from noon until close.

Is there a designated smoking area? If so, describe the location and show it on your site plan: Attach.

How will you handle and mitigate an obviously intoxicated person who is drunk and may be driving home? Will take their wristband and cut them off from alcohol sales and refer them to ACE security to handle and mitigate by calling a cab or making other transportation arrangements if necessary.

SECTION 10 – FOOD PLAN & PERMIT:
These guidelines should assist you in developing plans for food handling, preparation, and distribution in the most responsible and legal manner. Garfield County Public Health Department paperwork process for Temporary and Special Food Service Events must be followed if you will be having any event in Garfield County where food will be sold to the public. (This includes fairs, festivals, carnivals, farmers markets.) All vendors must obtain a retail food establishment license to serve open foods (including ice), and potentially hazardous foods that need to be temperature controlled. The event organizer is required to fill out a Garfield County Public Health Event Coordinator Plan Review (appendix A) and each vendor at your event must fill out and apply for an annual Garfield County Public Health Temporary Vendor Application (Appendix B) and a Garfield County Public Health Commissary Agreement (Appendix C) Temporary Vendor Permit Flow Chart (Appendix D). All food vendors at your event must have their original Colorado Retail Food Establishment license on premise at all times.

Please list food vendors at your event, name of vendor and product(s) served: El Kora, non-alcohol beverages, tacos and other Mexican food.

Vendors Exempt from Licensing (Exempt foods include popcorn or kettle corn, raw agricultural commodities such as honeycomb and uncut produce, commercially pre-packaged products that do not require refrigeration and cottage foods such as pickled fruits and vegetables, spices, teas, dehydrated produce, nuts, seeds, honey, jams, jellies, preserves, fruit butter, flour and baked goods, including candies, fruit empanadas, tortillas and other similar products that do not require refrigeration for safety. Please list food vendors exempt from licensing at your event, name of vendor and product(s) served: None.

SECTION 11 – SALES TAX LICENSE SUBMITTAL PLAN:
If goods and/or services (including the sale of alcohol and food) are to be sold at event, each vendor must obtain a Town of Carbondale Sales Tax License, which they must purchase and pay for at Carbondale Town Hall, 511 Colorado Avenue. Cost is $15.00 for a temporary one-day license; $25.00 for an annual license; and FREE for a governmental agency or charitable organization. Note: A governmental agency or charitable organization must still obtain a Sales Tax License, and if making taxable sales, they shall collect sales tax and consumers shall pay sales tax on such sales.

Event organizer is responsible for submitting a list of Vendors working event to the Town of Carbondale Recreation Dept. no later than one week prior to your event. Vendors who did not obtain a Sales Tax License, and who attempt to work the event, shall be shut down by Event Organizers and/or Town staff. Event Organizers are responsible to visually verify and make sure that each vendor has their license and that it is posted within booth.
SECTION 12 – LIABILITY INSURANCE:
Liability insurance coverage must be provided for special event. If your event includes alcohol, liquor liability coverage must also be included. At least one week prior to the event, a certificate of insurance must be submitted to the Town Clerk. The certificate shall name the Town of Carbondale as an additional insured (for example: “Town of Carbondale, its officers, employees, & agents”). This commercial general liability insurance certificate requires the following minimum amount of coverage. Please initial each section.

- $1,000,000 each occurrence; $2,000,000 aggregate: [Attached copy of insurance policy]
- Host and general liquor liability insurance required in the same amounts listed above: [Attached copy of insurance policy]

SECTION 13 – EVENT DEBRIEFING:
An event debriefing may be held following your event at Town of Carbondale staff discretion. You are encouraged to attend this debriefing to help offer insight into the success of your event. The purpose of the debriefing will be to identify areas of success, and also areas in need of improvement, should you decide to hold your event annually.

SECTION 14 – FEES AND DEPOSITS

PARK (OR) STREET RENTAL USER FEE:

- $100.00 User Fee per each day of use between 100 – 300 participants
- $200.00 User Fee per each day of use with over 300 participants

Paid Date: 03/26/19

PARK (OR) STREET CLEANUP/DAMAGE DEPOSIT FEE:

- $200.00 Cleanup/Damage Deposit Fee for event with 100 – 300 participants
- $500.00 Cleanup/Damage Deposit Fee for events with over 300 participants

Paid Date: 03/26/19

These amounts may be increased if it is deemed necessary for a particular event or activity.

Event Organizer shall submit two (2) checks payable to: TOWN OF CARBONDALE

One check designated for Rental User Fee of the Park/Street, and the other check designated for Park/Street Cleanup/Damage Deposit Fee. These fees must be submitted with your application and will be returned if denied. Please note that if the Town deems necessary, a portion of the cleanup/damage deposit fee may be utilized by the Town for the purpose of payment of unforeseen costs necessary to insure and protect public safety during the event, and to ensure the terms and conditions of this Rental Agreement are fulfilled. The deposit shall not limit Event Organizer from liability for such expenses in excess of the Cleanup/Damage Deposit Fee submitted. A refund check for deposit amount (minus any deductions if required) will be issued after the event.

Initial here:

SECTION 15 – LICENSES, PERMITS, AND FEES
Event Organizer shall adhere to all local and state requirements regarding business licenses, taxes, vending, and special event permits and policies.

Initial here:

SECTION 16 – INDEMNIFICATION:
Event Organizer agrees to indemnify the Town, its officers, agents and employees, and to hold them harmless as to any claim, liability or damages, including attorney fees and court costs, arising out of, or directly or indirectly resulting from the conduct of the event.
Certificates of insurance shall be provided to the Town Clerk at least one week prior to event.

Initial here:

SECTION 17 – CANCELLATION OF EVENT:
Event may be cancelled by the Carbondale Town Manager, or his designee, if a recommendation is made by the Parks & Recreation Director, Public Works Director, or Chief of Police that the terms of this Agreement and Event Management Plan are not substantially fulfilled in a timely manner, or in the event of an unforeseen catastrophic event or act of God. In the event of such cancellation, the Town shall remit to Event Organizer all rental fees and damage deposits minus any expenditures incurred by the Town. Neither party shall be liable to the other for any lost profits, lost revenues or consequential damages in the event of such cancellation.

Initial here:

SECTION 18 – RELEASE OF LIABILITY:
The Town assumes no responsibility whatsoever, for any non-municipal property used within the premises of Event, and the Town is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to any person or property of Event Organizer, its employees, agents and concessionaires, or of any performer or spectator that may be sustained by reason of the occupancy within the premises of event under this Agreement.

Initial here:

SECTION 19 – AUTHORITY TO CONTRACT:
The Town of Carbondale and Event Organizer represent that each has the power to enter into this Agreement, and grant or receive as the case may be, the license herein granted; each represents that it does not require the consent of any other person or entity (governmental or otherwise), and that this Agreement constitutes a valid and binding obligation of the Town of Carbondale and Event Organizer which is enforceable against the respective parties in accordance with the terms hereof.

Initial here:

SECTION 20 – ATTORNEY’S FEES:
In the event that suit is brought (or arbitration instituted) or any attorney is employed or retained by any party to this Agreement to enforce the terms of this Agreement, to collect any money due there under, or to collect any money damages for breach thereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney’s fees and costs incurred in connection therewith, including the reasonable value of salaried attorney’s time.

Initial here:

Event Organizer Name (Please print):  Chris Pooley

Signature:  

Date: 3/26/17
ROTARY CLUB
SPECIAL EVENT
MAY 5TH, 2019
STREET CLOSURE
S. 7th St.
BETWEEN MAIN ST.
& EUCLID AVE.
CARBONDALE, CO.
MUTCD TA-20
1-22-18

SIGN LIST;
10-36” ROAD CLOSED AHEAD
2-48”x36” ROAD CLOSED TO
THRU TRAFFIC
4-TYPE I (aaw) DETOUR (4-double)
12-CROWD CONTROL BARRICADES
4-48”x36” ROAD CLOSED
12-36” TRAFFIC CONES

---NOTE---
XX-WORK AREA
"NOT TO SCALE"
SIGN SPACING
MEASUREMENTS
ARE AT SET MINIMUM
STANDARDS

PREPARED BY
TRAFFIC CONTROL SUPERVISOR;
Cal Whitman 1-22-18
APPROVED BY
CONTRACTOR;
DATE

APPROVED BY
CITY/TOWN OF;
DATE

CONES TO
reserve Parking
for loading in-out.
24 November 2014

To Whom It May Concern:

Rotary International, a non-profit organization incorporated in Illinois, is exempt from federal income tax under 501 (c) (4) of the Internal Revenue Code. This exemption applies to all subordinate units, i.e. districts and clubs, that are properly registered with the Internal Revenue Service.

The Rotary Club of Roaring Fork (Glenwood Springs), Colorado, USA, is a member in good standing of Rotary International and has been since its admission on 9 June 2004.

Rotary International's group exemption number is 0573. The Employer Identification Number (EIN) for the Rotary Club of Roaring Fork (Glenwood Springs), Colorado, USA, as reported annually to the IRS, is 30-0426083.

Sincerely,

[Signature]

Deanna Cankar
Manager, The Americas
Club and District Support
SPECIAL EVENT MANAGEMENT PLAN STAFF REVIEW & RECOMMENDATION
(With Comments, Conditions, and/or Requirements for Event)

PARKS & RECREATION DIRECTOR:

on-site meeting with organizers the week before to talk about park details. All trash must be removed day of event, not the following day. Decible readings must remain within range.

Approval: ☑ Approval Pending: ________ (see above) Denial: ____________

Signature: ___________________________ Date: 3-28-2019

PUBLIC WORKS DIRECTOR:

_______________________________

Approval: ________ Approval Pending: ________ (see above) Denial: ________

Signature: ___________________________ Date: __________

CHIEF OF POLICE:

_______________________________

Approval: ________ Approval Pending: ________ (see above) Denial: ________

Signature: ___________________________ Date: __________

TOWN CLERK: (Liquor Licensing Approval)

Liquor License has been applied for Hearing 4-9-19

Approval: ________ Approval Pending: ________ (see above) Denial: ________

Signature: ___________________________ Date: 4-11-19

TOWN MANAGER:

must meet noise levels

Approval: ________ Approval Pending: ________ (see above) Denial: ________

Signature: ___________________________ Date: 4-11-19
To: Mayor Dan Richardson and
Carbondale Board of Trustees

From: Gene Schilling
Chief of Police, Carbondale Police Department

Ref.: Liquor License Special Event for the Thunder River Theater for a special event on
May 4th from 4:00—11:00 p.m. at the Orchard.

Date: April 2, 2019

I have found no records that would cause me to recommend denial of this liquor license
special event application to serve alcohol.

Corey Simpson / Applicant

I recommend approval of this liquor license.
TOWN OF CARBONDALE
APPLICATION FOR A SPECIAL
EVENTS PERMIT

IN ORDER TO QUALIFY FOR A SPECIAL EVENTS PERMIT, YOU MUST BE NON-PROFIT
AND ONE OF THE FOLLOWING:

X SOCIAL ☐ ATHLETIC ☐
☐ FRATERNAL ☐ CHARTERED BRANCH, LODGE OR CHAPTER ☐
☐ PATRIOTIC ☐ OF A NATIONAL ORGANIZATION OR SOCIETY ☐
☐ POLITICAL ☐ RELIGIOUS INSTITUTION ☐

TYPE OF SPECIAL EVENT APPLICANT IS APPLYING FOR: ☐ LIQUOR PERMIT NUMBER
X ☐ MALT, VINOUS AND SPIRITOUS LIQUOR $50 PER DAY

1. NAME OF APPLICANT ORGANIZATION OR POLITICAL CANDIDATE
Thunder River Theatre Company

2. MAILING ADDRESS OF ORGANIZATION OR POLITICAL PARTY
67 Promenade
Carbondale, CO 81623

3. ADDRESS OF SPECIAL EVENT
110 Snowmass Drive
Carbondale, CO 81623

NAME

DATE OF BIRTH

EMAIL ADDRESS

PHONE NUMBER

4. PRES/SECY OF ORG. OR POLITICAL CANDIDATE
Corey Simpson

5 EVENT MANAGER
Corey Simpson

6. HAS APPLICANT ORGANIZATION OR POLITICAL CANDIDATE BEEN ISSUED A SPECIAL EVENT PERMIT THIS CALENDAR YEAR?
X ☐ NO ☐ YES HOW MANY DAYS?

7. IS PREMISES NOW LICENSED UNDER STATE LIQUOR OR BEER CODE?
X ☐ NO ☐ YES TO WHOM?

8. DOES THE APPLICANT HAVE POSSESSION OR WRITTEN PERMISSION FOR THE USE OF THE PREMISES TO BE LICENSED?
X ☐ NO ☐ YES HOW MANY DAYS?

LIST BELOW THE EXACT DATES(S) FOR WHICH APPLICATION IS BEING MADE FOR PERMIT

<table>
<thead>
<tr>
<th>Date</th>
<th>Hours From</th>
<th>Hours To</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/4/19</td>
<td>4 pm</td>
<td>11 pm</td>
</tr>
</tbody>
</table>

OATH OF APPLICANT

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.

SIGNATURE

TITLE: Executive Artistic Director

DATE: 3/19/19

REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 12, Article 48, C.R.S., as amended.

THEREFORE, THIS APPLICATION IS APPROVED.

SIGNATURE

TITLE

DATE

LOCAL LICENSING AUTHORITY

ATTEST
FACILITY RENTAL AGREEMENT

<table>
<thead>
<tr>
<th>Event:</th>
<th>TRTC Annual Fundraiser</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of People:</td>
<td>200-250</td>
</tr>
<tr>
<td>Event Date:</td>
<td>Saturday, May 4, 2019</td>
</tr>
<tr>
<td>Event Start Time:</td>
<td>5 PM</td>
</tr>
<tr>
<td>Event End Time:</td>
<td>10 PM</td>
</tr>
<tr>
<td>Set-up Time:</td>
<td>Friday, May 3, 2019 after 9:00 AM</td>
</tr>
<tr>
<td>Rooms:</td>
<td>Gathering Center, Auditorium, Front Foyer, Kitchen</td>
</tr>
<tr>
<td>Event Fee:</td>
<td>$3000 Fee for Entire Facility</td>
</tr>
<tr>
<td>Staff:</td>
<td>1 Event Overseer/Laurie Sabo</td>
</tr>
<tr>
<td></td>
<td>Additional staff to be determined to be contracted with TRTC for the Event - $25/Hour per person</td>
</tr>
</tbody>
</table>

Client Name: Corey Simpson  
Address: 57 Promenade, Carbondale, CO 81623  
Phone: 970-987-9865 cell/970-963-8200 work  
Email: Corey@thunderrivertheater.com

3/8/19

1. Event Fee Payments & Building Use

A. At or before the time of execution of this contract, Renter shall pay to The Orchard the full fee for rental in the amount of $3,000.00. This payment secures the Gathering Center, Auditorium, Front Foyer, Kitchen on Friday May 3rd for set up after 9am as well as set up and event Saturday, May 4, 2019 from 9 AM - 10 PM. Additionally, Renter shall provide at the same time a refundable security deposit in the amount of $2500.00 or credit card with an open balance of the required deposit amount. The security deposit is refundable net any unforeseen incidental costs incurred by The Orchard during the rental period.

RENTER MUST PROVIDE AN EVENT COORDINATOR FOR THE EVENT. THE ORCHARD WILL ONLY BE PROVIDING FACILITIES FOR THE EVENT. ALL OTHER REQUIREMENTS TO SET-UP, CONDUCT AND CLEAN-UP/RESTORE, CATER, SERVE BEVERAGES, ETC. WILL BE THE FULL RESPONSIBILITY OF THE RENTER.

B. The Gathering Center is a ministry of The Orchard. The Orchard can, at its discretion, deny anyone use of the facilities without explanation or reason. For events with outside vendor booths, Notice of participating Vendors must be received by The Orchard 30 days prior to the planned event. The Orchard reserves the right to refuse a vendor booth space for any reason including if their service or product can be interpreted as being contrary to our Core Beliefs. This includes but is not limited to: "adult" or pornographic products, "spiritual readings" i.e.: fortune tellers, psychics, tarot cards, etc. This determination is at the sole discretion of the Lead Pastor and/or Elder Board.

C. Renter and its guests will occupy the premises for the purposes stated and will only occupy the space(s) leased as detailed in the attached Event Order identified. Renter will be provided with a specific time for set-up for its event. No set-up will be allowed outside of the time provided. Renter will respect the rights of others to use other portions of The
Orchard's facility during normal hours of operation, and will not permit any noise, nuisance or parked vehicles that might have a tendency to annoy, disturb or hinder any persons occupying other portions of the building.

D. Rental of The Orchard facilities does not include any services outside of rental of the facilities. The Orchard will provide a contact person to have the facilities open and ready, observe the event and assure that clean-up and closure take place per this agreement. Any items on this contract that The Orchard has to complete beyond the rental will be deducted from the security deposit. Should these items exceed the security deposit amount the Renter will be billed for the difference that will be due within 14 days of billing date.

E. The Orchard décor will change regularly and may be different than what you saw at the time of signing this contract. Artwork is not to be removed. Nothing is to be placed on the walls, ceilings or windows without prior written consent. Absolutely NO GLITTER OR CONFETTI of any kind. Absolutely no nails, staples or holes are allowed. Only blue painters tape is to be used to hang items on the walls. Any & all decoration must be approved and is limited to the rented space only.

F. All Decorations must be taken down and removed from The Orchard immediately per this contract following the Event. Decorations that must be removed by The Orchard staff or outside party will be charged against the security deposit based on actual costs.

G. Storage will not be provided for decorations, food, or other supplies prior to the Event unless arrangements have been made ahead of time. The Orchard will provide water, tea and lemonade for the event, included in the facility fee.

H. No religious objects of The Orchard may be covered or removed. An exception is drawing the stage curtain before the altar. Sound equipment cannot be used without The Orchard’s approval and only with approved technicians. Any damage to The Orchard’s sound and visual equipment will be the sole responsibility of the Renter. Any moved furniture must be replaced in its pre-event position at the conclusion of the Event. Piano will be allowed during this event, any damage to the instrument will be billed against the deposit for the total amount of repairs incurred.

I. The Orchard is a NONSMOKING facility. In accordance with Colorado law smoking is not allowed within 15 feet of any entrance or in any area where food is being served and/or consumed.

J. Renter is responsible for the conduct of guests and all damages incurred to The Orchard’s facilities.

K. The Orchard assumes no responsibility for the damage or loss of articles left on The Orchard’s premises prior to, during or following the Event.

L. The Renter agrees to be responsible for the conduct of its guests. Renter agrees that at the request of The Orchard, it will remove from its premises any guest The Orchard and the Renter considers at their discretion exhibiting inappropriate conduct. In the event any state law or local ordinances are being violated, The Orchard will immediately terminate the Event at Renter’s expense.

O. Loading and Unloading of Supplies – Vehicles are not to be driven onto Orchard sidewalks or property. Event Items must be carried or rolled on non-motorized carriers into The Orchard facilities. A minimum damage assessment of $500 above the security deposit will be charged for tire tracks left on Orchard property.

P. Sound Volume – For the safety and comfort of guests, performers, staff and volunteers, The Orchard reserves the right to control the volume of its events. Music is not to be played above a decibel of 100. Orchard staff will monitor this level and will ask a band/DJ to adjust their sound accordingly. Refusal to comply will result in an immediate termination of the event.
2. Event Exceeding Specified Time

If the duration of The Event exceeds the Event Duration specified above, Renter will pay The Orchard an additional fee of $1000 per each hour the actual duration of the Event exceeds the specified Event Duration (any minute into an hour will cause the entire hour to be charged).

**All Orchard Events must end at 10 PM. There are no exceptions to this.**

3. Cancellation Fees

If the Event is cancelled, the following cancellation fees payable on the date of cancellation apply:

- Event cancelled 60 days or less before the Event Date: 50% of the Event Fee

4. Method of Payment

Payment may be made by cash, check, cashier’s check, Visa, or MasterCard (in the case of credit cards. The Orchard will add onto the rental charge any incurred credit card charges).

If Renter is a Tax-exempt Organization, a photocopy of the tax-exempt certificate must be on file in the before Renter will be set-up as tax-exempt. Any organization found using a false tax-exempt number will be charged back taxes in the total amount due.

5. Advertising
A. When advertising the event venue, please refer to us as The Orchard, The Gathering Center or The Gathering Center at The Orchard. Any questions relating to such use should be directed to The Orchard.

Client Initials

6. Alcohol

A. The Orchard does not provide, or sell alcoholic beverages.

B. Alcohol served at the Event is limited to beer and wine only unless special consideration approved by the Lead Pastor. Should approval be gained for such a special allowance the Renter agrees to provide additional security and control of any attendees abusing this beverage allowance.

C. Any beverage which contains alcohol must always be clearly labeled and/or in its original container.

D. Alcoholic beverages must be served by certified bartender(s). No self-serve is permitted. A copy of the bartender's certification must be on file with The Orchard 1 week prior to the Event.

E. The certified bartender(s) must be willing to refuse service when they determine a person appears to be intoxicated. The Orchard’s staff and elders will support the decision if an issue arises from the decisions to refuse alcohol to a person. The bar will be attended the entire time alcohol is being served.

F. Alcohol will not be sold by The Orchard at functions held at The Orchard. Alcohol cannot be sold by Renter at the Event unless Renter has first obtained a Special Event Permit from the Town of Carbondale.

G. Food must be served at the Event if alcohol is being served.

H. Under no circumstances will alcohol be served to or consumed by any person under the age of 21 even when accompanied by their parents. If any person under the age of 21 is found consuming alcoholic beverages, The Orchard reserves the right to terminate the Event at the Renter’s expense.

I. Drinking alcohol will never be a social requirement. Whenever alcohol is served in any form, non-alcoholic alternatives must also be offered. Non-alcoholic beverages must be served with the same attractiveness and accessibility as those containing alcohol, so that those who choose not to drink alcoholic beverages need not feel any embarrassment, discomfort or inconvenience in exercising their preference.

J. All applicable Federal, State and Local laws and ordinances governing the use/distribution/sale of alcohol must be adhered to when serving alcoholic beverages including the requirement to obtain a Special Event Permit from the Town of Carbondale if alcohol will be sold at the Event.

K. Groups not affiliated with The Orchard shall have security on-site as deemed necessary by The Orchard.

L. During Events requiring a Special Event Permit from the Town of Carbondale, alcohol will be consumed only in areas specifically identified in the License. However, under no circumstances will alcohol be permitted in the parking lot.

M. Renter agrees to be responsible for the consumption of alcoholic beverages and other legal and illegal substances by all guests.

N. All licenses and permits required must be posted in a conspicuous place in the licensed area for the general public to observe. The licenses and permits required include, but are not limited to the following:

a. Special Event Permit – State

b. Special Event Permit – City

c. Minor Warning Sign – The Orchard has these signs on file and will provide to Renter for the Event upon request

d. State Sales Tax License – Even though these permits are issued to non-profit organizations, the retail sale of alcohol beverages to consumers is still subject to state and local sales taxes. Special Event Permit applicants should contact the Department of Revenue at (303) 238-7378 to determine the correct method or remitting the sales tax.

e. Other local licenses as required – Check with the local authority, Town of Carbondale

Q. Per the guidelines stipulated in the Special Event Permit Guide from the Colorado Department of Revenue Liquor Enforcement Division, donated beverages cannot be resold. Alcohol beverages
received from other non-licensed or private sources may not be sold, served or consumed at Events requiring a Special Events Permit.

CS Client Initials

7. Additional Terms & Conditions

CS

A. At the start of the Event will include a message from The Orchard representative welcoming attendees, encouraging them to visit The Orchard and encouraging them to have a great time at their Event. For events where there is not a formal program, the event agrees to allow The Orchard to have marketing table tents on their tables.

B. Should the Kitchen be utilized for an event, it must be restored to its pre-event condition. Anything short of this will be restored by The Orchard and costs will be deducted from the security deposit.

C. Use of the fire pits requires adult supervision and special approval from The Orchard.

D. Youth groups must be supervised by adult sponsors in the following ratios: children 13 and younger require 1 adult per 10 children. Teens aged 14 and older require 1 adult per 15 teens.

E. Children 8 years old and younger MUST have constant supervision while their parents or guardians are using the facility.

O. During the time of the Event, the Renter and its guests shall obey all laws of the State of Colorado and ordinances of the Town of Carbondale.

P. Renter authorizes The Orchard to charge the credit card identified below for any fees set forth in this Agreement that have not been paid by Renter by the respective due dates. If the Renter does not wish to provide a valid credit card, a deposit of $2,500.00 cash deposit is required at time of facilities booking.

Q. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Neither The Gathering Center/The Orchard nor the undersigned shall be required to perform any term, conditions, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, or any other cause not reasonably within the control of The Gathering Center/The Orchard or Client and which by the exercise of due diligence of The Gathering Center/The Orchard or Client is unable, wholly or in part, to prevent or overcome. This Agreement and attachments embody the entire agreement and understanding of the parties relating to the subject matter hereof, is non-assignable, may not be amended except in writing signed by both parties, and supersedes any prior representations, agreements, and understandings, oral or written, if any, relating to such subject matter.

R. Renter agrees to indemnify The Orchard and save The Orchard harmless from any and all damages or losses The Orchard may suffer, including attorney’s fees, as a result of claims, demands, costs, or judgments against it arising out of the use of The Orchard facility by the renter. Renter agrees to provide The Orchard with a certificate of insurance prior to the Event.

S. ANY MODIFICATIONS TO THIS AGREEMENT MUST BE APPROVED IN WRITING BY THE LEAD PASTOR OF THE ORCHARD.

CS Client Initials

The Renter and The Orchard through their authorized signatures below agree to the terms and condition of this Facility Rental Agreement (ALL 6 PAGES) including all attachments thereto.
Corey Simpson  
Renter: Thunder River Theatre Company

Date: 3/26/19

Corey Simpson  
Authorized Signature of Renter

The Orchard  
By: Annie Jones
Title: Communications Director – The Orchard
Date: 3/27/19

By my signature below, I authorize The Orchard to charge my credit card for any fees set forth in this Agreement that have not been paid by Renter by the respective due dates.

Name as it appears on Credit Card

Billing Address

Carbondale, CO 81623
City, State, Zip

3/26/19 Today's Date

4755 7064 4033 8128
Visa or MasterCard #

02/22 903
Expiration Date

CVC

Corey Simpson  
Authorized Signature

Thunder River Theatre
OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

ROARING FORK FRIENDS OF THE THEATER, INC.

is a Nonprofit Corporation
formed or registered on 05/05/2000 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20001091648.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/27/2019 that have been posted, and by documents delivered to this office electronically through 03/28/2019 @ 13:08:39.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/28/2019 @ 13:08:39 in accordance with applicable law. This certificate is assigned Confirmation Number 11480512.

Secretary of State of the State of Colorado

******************************************************************************End of Certificate******************************************************************************

Notice: A certificate issued electronically from the Colorado Secretary of State’s Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State’s Web site, http://www.sos.state.co.us.biz-CertificateSearchCriteria.do entering the certificate’s confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click “Businesses, trademarks, trade names” and select “Frequently Asked Questions.”
Board of Trustees Agenda Memorandum

Item No:

Meeting Date: 04/09/2019

TITLE: Ordinance Regarding Payment of Charges for Municipal Utilities

SUBMITTING DEPARTMENT: Finance

ATTACHMENTS: Ordinance #8

BACKGROUND: The Town of Carbondale currently has the utility payment deadline for delinquency as noon on the last business day of the month.

DISCUSSION: With the advantages of computers and online payments available, it is more efficient for staff, online providers and customers to have payments accepted through midnight of the day. This will allow staff to process the prior day first thing in the mornings, allow for billings to be processed starting in the morning and to give customers through the end of the last working day to make payments.

RECOMMENDATION: Approval of the Ordinance

Prepared By: Renae Gustine
ORDINANCE NO. 8
SERIES OF 2019

AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO AMENDING CHAPTER 13, ARTICLE 3 OF THE MUNICIPAL CODE OF THE TOWN OF CARBONDALE REGARDING PAYMENT OF CHARGES FOR MUNICIPAL UTILITIES

WHEREAS, pursuant to the Town of Carbondale’s police powers and the Carbondale Home Rule Charter, the Board of Trustees is authorized to regulate payment of charges for municipal utilities; and

WHEREAS, Chapter 13, Article 3 of the Municipal Code sets forth regulations regarding when charges for water and waste water must be paid before the charge is considered delinquent; and

WHEREAS, the current code requires payment of charges by 12:00 p.m. on the last business day of a given month in order to avoid delinquency; and

WHEREAS, the current code language results in inefficiencies for Town staff; and

WHEREAS, the current code language was adopted before it became commonplace to pay municipal utility bills online and does not account for the ability of Town residents to pay their municipal utility bills through the Town’s electronic payment system, which includes an automatic payment option; and

WHEREAS, on March 19, 2019, the Board of Trustees approved an ordinance amending Chapter 7, Article 3 of the Municipal Code related to the award of a residential curbside trash and recyclables collection services contract to a waste hauler; and

WHEREAS, pursuant to the forthcoming residential curbside trash and recyclables collection services program, all Town residents receiving Town water service will be billed for the residential trash and recyclables collection services in conjunction with the charge for Town water and waste water service; and

WHEREAS, Town staff anticipate that, as part of the rollout of the residential curbside trash and recyclables collection services program, many Town residents may elect to enroll in the Town’s electronic payment system for municipal utility bills; and

WHEREAS, the Board of Trustees desires to update Chapter 13, Article 3 of the Town Municipal Code to address necessary changes related to when payment must be made for charges for municipal utilities.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that the Town of Carbondale Municipal Code shall be amended as follows:
1. The foregoing recitals are hereby adopted as findings and determinations of the Board of Trustees.

2. Chapter 13, Article 3 of the Town of Carbondale Municipal Code shall be amended by deleting the language stricken and adding the language underlined to read as follows:

Sec. 13-3-120. – Delinquent fees.

(a) All current water and waste water charges are due and payable monthly at Town Hall on the last day of each month. In the event the owner of the premises on which the water and waste water are used fails to pay the charges for any one month by midnight 12:00 p.m. on the last business day of said month, the charge shall be held to be delinquent.

3. This Ordinance shall become effective thirty (30) days after posting publication in accordance with the Town’s Home Rule Charter.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED this 9th day of April, 2019.

TOWN OF CARBONDALE

________________________________________
Dan Richardson, Mayor

ATTEST:

________________________________________
Cathy Derby, Town Clerk

Posted: 
Published: 
Effective: 

12248851_1
Board of Trustees Agenda Memorandum

Item No: 10, Attachment N

Meeting Date: April 9, 2019

TITLE: Memorandum of Understanding with Roaring Fork Pickleball Association for the North Face Park pickleball courts

SUBMITTING: Parks & Recreation Department

ATTACHMENTS: MOU Language
              Site Plan
              Conceptual Visuals

PURPOSE:
Roaring Fork Pickleball Association (RFPA) has reviewed the language of the attached MOU and is seeking approval of the document along with the conceptual site plans.

BACKGROUND:
The MOU establishes the relationship between the Town of Carbondale and the RFPA. The acceptance of the terms of the relationship outlined in the MOU will allow RFPA to fundraise for the construction of the pickleball courts, to seek sponsorship and recreation amenity naming rights, and to begin the process of seeking proposals for a RFQ/RFP for the construction of the courts.

DISCUSSION:
RFPA is willing to fund the design/build project in exchange for the MOU allowing for dedicated RFPA access to the courts at pre-determined and posted times. RFPA is also requesting the ability to utilize the courts for fundraising, in the form of clinics, tournaments, membership fees and organized drop-in sessions. The fundraising aspect is necessary to help pay down any portion of the construction that has been bank financed. Collateral for the bank loans will not be provided by the Town of Carbondale. The courts would be Town owned, on public park land and open to the public. RFPA is also requesting that a donor could purchase naming rights to the courts and a sign would display the new name located on the outside of the courts. The sign would abide by our town signage policy and the naming process would be conducted through our existing park and park amenity naming policy. RFPA is also asking for individual court naming sponsorship opportunities to be available to donors through donations to the RFPA. The goal of the RFPA is to establish the organization as a 501 (c) (3) non-profit.

ANALYSIS:
The MOU initial term shall extend for five years but contains language allowing for amendments which are mutually agreed upon. Next step is for the RFPA to fundraise, utilizing the approved site plan and the MOU language. Town staff would then create a RFP/RFQ for a design/build proposals.
FINANCIAL IMPLICATIONS:
The Town shall not be obligated to proceed with development unless adequate funds are raised by RFPA. The Town will be responsible for annual and long-term maintenance of the facility. With a new facility that will utilize post-tensioned concrete for the construction of the slab and industry standard court surfacing techniques, we should experience minimal maintenance expenditures for the next ten years.

RECOMMENDATION:
Staff recommends that the MOU and the attached conceptual site plans be approved at this time.

Prepared By: Eric Brendlinger, Recreation Center Manager

/JH/
Town Manager- Jay Harrington
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
TOWN OF CARBONDALE
AND
ROARING FORK PICKLEBALL ASSOCIATION
REGARDING FUNDRAISING FOR DEVELOPMENT, CONSTRUCTION, MAINTENANCE & MANAGEMENT OF PICKLEBALL COURT COMPLEX LOCATED WITHIN THE NORTH FACE PARK

This Memorandum of Understanding ("MOU") is entered into this ___ day of April, 2019 between the TOWN OF CARBONDALE, a Colorado home rule municipal corporation with a street address of 511 Colorado Ave., Carbondale, CO, 81623 (the "Town") and the ROARING FORK PICKLEBALL ASSOCIATION, a Colorado unincorporated non-profit association, with a street address of 20e. Maroon Place, Carbondale, CO, 81623 ("RFPA"). RFPA intends to incorporate itself as a Colorado nonprofit corporation in the near future. Upon such incorporation, RFPA shall promptly provide the Town with copies of the articles of incorporation and a certificate of good standing, at which point all of RFPA’s rights and obligations pursuant to this MOU shall be deemed wholly assigned to the new nonprofit corporation. However, RFPA may not further assign its rights and obligations pursuant to this MOU without express prior approval of the Town.

1. Background

On December 18, 2018, the Town of Carbondale’s Board of Trustees authorized Town staff to work with the Roaring Fork Pickleball Association (RFPA) on their proposed master plan and development of dedicated pickleball courts at a site on Town of Carbondale land located within the Town’s existing North Face Park. A condition of this authorization was that a Memorandum of Understanding (MOU) agreement be signed between the Town of Carbondale (Town) and an established local entity which will fund the project, and coordinate with the Town regarding the design, development, maintenance, improvements and priority of access to the site. The final project will be on Town land and be owned by the Town of Carbondale and operated as a public recreation amenity within a Town park, subject to the terms of this MOU.

2. Goals of the Town:

- Manage and maintain all parks, trails, open space and recreation facilities, including the Carbondale Pickleball Court Complex
- Oversee the design, development, construction and management of the Carbondale Pickleball Court Complex
- Conduct an assessment of North Face Park infrastructure present and future needs
3. **Goals of RFPA:**

- Assist in the activities and enjoyment of pickleball for all members
- Serve and to act as a public forum for discussing, evaluating and promoting the sport of pickleball.
- Provide private funding through annual dues paid by members and donations.
- Promote maintenance and enhancement of pickleball facilities.
- Launch or support programs and services that address local Pickleball players needs, and collaborate with the Town of Carbondale on fundraising, development, construction, scheduling, maintenance and improvements to the Carbondale Pickleball Court Complex.

4. **Scope of Work:**

- The work described within this MOU agreement includes ongoing and future activities to be undertaken by the Town and/or RFPA to fundraise, design, develop, construct, make improvements, maintain, schedule and manage the proposed Carbondale Pickleball Court Complex within the North Face Park.
- Current and future members of RFPA, along with other additional recruited community volunteers, will raise funds for the site preparation, design and construction of a pickleball court complex at the North Face Park, to include engineering drawings and a landscape site plan taking into consideration and highlighting the ADA access plan.
- Construction of new pickleball courts at the North Face Park will require existing irrigation infrastructure to be abandoned under the footprint of the new courts. RFPA will be responsible for this work and any work needed to redesigned the existing system and make it functional for the remaining turf park irrigation needs.
- RFPA’s president will serve as the main liason for RFPA’s dealings with the Town pursuant to this MOU unless otherwise agreed by the Town.
- The work efforts and activities of RFPA and their project representatives will be outlined within this MOU and/or in an annual project plan addendum approved for future year(s).
- Any project or activity not included in this MOU or in the Town's maintenance plan for this site is subject to review and approval by designated representatives of the Town.

5. **Roles and Responsibilities:**

**Town of Carbondale:**

- The Town will act as the project manager for the design, permitting, request for proposals and bidding process, construction and development of the Carbondale Pickleball Court Complex based on the design parameters created by staff, stakeholders, consultants and public outreach efforts. Contingency design decisions and modifications to the project if needed, will be based on availability of resources and site conditions and consultation with Town staff, with feedback from RFPA.
• The Town will provide for access by RFPA and the general public to the Carbondale Pickleball Court Complex site, and make the site available for regularly scheduled pickleball play, subject to the following priority of use:
  Scheduled Use – Priority use is given to the following organizations in this order:
  1. Town of Carbondale Programs & Activities
  2. Roaring Fork Pickleball Association
  3. Intergovernmental Agreement Use
  4. Carbondale Youth Club Sports
  5. Carbondale Residents Groups
  6. Area Youth Sports Groups
  7. Adult Groups Non-profit

• The Town will provide a schedule of annual recreation department programming use by April of each year to allow RFPA to conduct drop-in and reserved options for maximum use of court time and to allow RFPA to provide a seasonal schedule that mitigates court use conflicts.

• The Town will provide designated access to the pickleball courts for RFPA’s members at the following times:
  Monday, Wednesday, Friday and Saturday for 4 hour blocks, starting no earlier than 7 am (peak Summer season) and no later than 10 am (weather, temperature, light driven in the shoulder seasons) This represents 20 hours a week of reserved court time for scheduled drop-in play, managed by the RFPA representatives and available to RFPA members.
  Tuesday & Thursdays starting at no earlier than 5 pm- until closure due to darkness. If lights are added evening access would be revisited annually. This represents an additional 6 to 8 hours of reserved court time for scheduled drop-in play, managed by the RFPA representatives and available to RFPA members.
  Designated Court Access for RFPA allows RFPA to determine play protocol depending on who shows up and the level of play. RFPA will manage this.

• The Town will provide public access to the pickleball courts at times when scheduled and posted activities are not taking place. Open court times will be available to all on a first-come first-served basis. The courts are available to all on a one-hour honor system if players are waiting. Open court time can also be reserved thru the TOC Parks & Recreation Department. Open court time can also be designated for IGA uses by the Parks & Recreation Department. Open court time can be reserved thru Parks & Recreation Department for clinics, exhibitions, fundraisers and tournaments.

• The Town will provide maintenance upkeep and repair of all structural components of the Park, including but not limited to the public restrooms, parking areas, play surfaces, turf areas, sidewalks, fencing, and irrigation systems on a schedule to be determined by the Town.

• The Town will review all proposed site improvement projects and determine if they are appropriate for approval. All new projects or changes to existing or future public recreation amenities should be proposed and approved in writing.

• The Town may provide financial resources (if Town budgeted) that are needed for proposed activities, including but not limited to maintenance, programming, tournaments, clinics and special events.

• The Town will conduct regular trash pickups and North Face Park maintenance at a schedule to be determined by the Town and provide recycling opportunities in the park.
• The Town will meet with RFPA representatives for ongoing plan review and clarification of responsibilities annually.
• The Town will meet with RFPA representatives on or before November 1st of each year to review agreement activities and develop an annual work maintenance plan for the Pickleball Court Complex.
• The Town may seek possible outside funding for the Pickleball Court Complex and other North Face Park recreation amenity improvements through grants and other sources.
• The Town may assist, when time allows, the RFPA representatives with special events and tournaments.

_Roaring Fork Pickleball Association:_

• RFPA will fund the design, engineering, construction and development of the Carbondale Pickleball Court Complex based on the detailed site plan prepared by Richard Camp Landscape Architecture (RCLA) on March 14, 2019, a copy of which is attached hereto as Exhibit A and incorporated by reference. Contingency design decisions and modifications to the project if needed, will be based on availability of resources and site conditions and consultation with Town staff. The Town shall not be obligated to proceed with development unless adequate funds are raised by RFPA.
• RFPA will designate (with Town concurrence and approval) and supervise one (1) and no more than three (3) project liaisons, who will work collaboratively with the Town with the collective goal to develop and construct the Carbondale Pickleball Court Complex at the North Face Park.
• As a privately funded construction project on public land, RFPA shall comply with all rules and regulations that exist in Town parks.
• Exclusive use by private individuals for camps and clinics or tournaments must abide by Town Rules and Regulations. For profit use of a public amenity requires a contractual relationship with the Town and is a fee based use of the courts.
• RFPA use of the courts in an exclusive manner (Designated Access Time) for drop-in play for RFPA members only or a market rate drop-in fee as determined by benchmarking rates from similar facilities. Drop-in rate would need to be approved by RFPA and the Town of Carbondale Parks & Recreation Department for visiting pickleball players on an annual basis. The drop-in fee for visiting pickleball players, will be managed by RFPA. This time will be granted if within the 28 hours a week of scheduled RFPA weekly use for drop-in play. This time must be previously scheduled and posted for public consumption.
• Drop-in play schedules must adapt and not conflict with TOC Parks & Recreation Department programmed use of the courts. This schedule for seasonal use will be set in April of each year with the Town of Carbondale allowing RFPA to produce a non-conflicting drop-in schedule for the upcoming season.
• RFPA use of the courts in an exclusive manner for clinics, tournaments, club fundraisers, and other uses that fall outside of the 28 hours of RFPA Designated Access Time granted for drop-in play will be considered exclusive use and a fee based, scheduled use of the courts.
• Weekend tournaments produced by the RFPA will be considered exclusive use and a fee based, scheduled use of the courts. Court rental paperwork must be completed and paid for prior to use.
RFPA will only use the dual-purposed tennis/pickleball courts on an as needed overflow basis. These courts will be available for pickleball open/drop-in play for those with their own nets and balls.

Provide additional resources for all proposed activities, including but not limited to: maintenance, programming, tournaments, clinics and special events.

Provide a schedule detailing RFPA use of the facility on an annual basis according to the scheduled priority use presented above.

Organize and coordinate educational opportunities for school students and teachers to be introduced to the sport of pickleball.

Provide volunteers to carry out routine maintenance, along with Town approved special projects.

When required by the Town, obtain volunteer worker Waiver and Release Liability form signatures.

Provide feedback to the Town of Carbondale staff of the upkeep and maintenance needs of the Carbondale Pickleball Court Complex as a public community park amenity. During any exclusive use of Town property by RFPA, RFPA shall have sole responsibility for, and the Town shall have no liability for, management of the property and any injury or damage to persons or property occasioned by RFPA, its members, agents, or invitees.

6. RFPA Fundraising Plan: RFPA wishes to underwrite the design and build costs and solicit a Pickleball Court Complex sponsorship in exchange for naming rights of the courts. In accordance to resolution No 15 Series of 2013 which authorizes procedures for the naming or renaming of public parks and public facilities, there is a provision in C-6 of that document that honors a Town Park or Park Facility donor's stipulation that the naming or renaming of the park or park facility can occur as the condition of the donation. RFPA will be required to follow the provisions in the resolution to conduct this naming process for the pickleball courts. RFPA also wishes to place signage on the pickleball courts to honor the donors involved in the fundraising efforts to get the courts designed and built. A permanent plaque or recognition wall is allowed. The design and size should comply with our sign code in the Unified Development Code Chapter 17 Development Standard 5.9 Signs. Individual court sponsorship opportunities for fundraising purposes would be restricted to 6” x 18” signs on the inside of the fence, therby unseen from the exterior.

7. Term and Termination: The initial term of this MOU shall extend for five years from the date first set forth above. Thereafter, this MOU may be extended annually in accordance with Section 9, below. Notwithstanding the foregoing, the Town and/or RFPA may terminate this MOU for cause at any time by notice of material breach in writing. Except in emergency situations when notice may be immediate, such notice of material breach shall be provided at least 30 days prior to termination and the receiving party shall be given a reasonable opportunity to cure the breach. Either party may also decline to renew this MOU, with or without cause, at the conclusion of the term, per Section 9, below. In the event that either party provides the other with notice of material breach or non-renewal, the parties will meet promptly to discuss termination issues.

8. Amendment: The Town and RFPA may, from time to time, request changes in the nature of the provisions of this MOU. Such changes which are mutually agreed upon will be incorporated in written amendments to this MOU.
9. **Ratification of MOU:** It is agreed that, after the initial five-year term, this MOU shall be reevaluated and renewed (with or without amendments) by both parties annually, prior to November 1st of each year. In the event that either party does not reapprove, this MOU shall be deemed to terminate on February 1 of the next year.

10. **Insurance:** RFPA agrees to keep and maintain for the duration of this MOU including but not limited to commercial general liability with at least the minimum limits shown below. The commercial general liability insurance shall include completed operations coverage. RFPA shall furnish the Town with a certificate of insurance listing the Town of Carbondale as Certificate Holder and as an additional insured on RFPA’s general liability policy. In the event of bodily injury or property damage loss caused by RFPA or RFPA’s actions or inactions pursuant to this MOU, RFPA’s insurance coverage shall be primary with respect to any other insurance which may be available to the Town, regardless of how the “Other Insurance” provisions may read. In the event of cancellation, substantial changes or nonrenewal, the RFPA insurance carrier shall give the Town at least thirty (30) days prior written notice. No work shall be performed until RFPA has furnished to the Town the above referenced certificates of insurance, in a form suitable to the Town. Upon request, RFPA shall provide the Town copies of RFPA insurance policies and endorsements.

   Commercial General Liability:
   
   a. Each Occurrence: $1,000,000
   
   b. General Aggregate $1,000,000

   Nothing herein shall be construed as a waiver on the part of the Town to any defense of any claim, including but not limited to the defense of governmental immunity.

11. **Indemnification:** RFPA, its agents, officers, employees and volunteers shall indemnify, hold harmless, and defend the Town and all of its officers, agents, employees from and against any and all liability for personal injury and property damage arising out of or resulting from the negligent acts or omissions of its employees, its volunteers, and/or its agents, in the performance of this MOU, and any injury to persons or property occurring during any times then RFPA shall have exclusive use of Town property pursuant to this MOU. RFPA’s indemnity obligations hereunder shall include the obligation to pay any attorneys’ fees or other costs incurred by the Town in defense of any third party claims.

12. **Assignment:** Neither party shall assign any interest in this MOU unless approved in writing by both parties.

13. **Governing Law:** The MOU shall be construed under the statutes and laws of Colorado. It is agreed between the parties that RFPA will comply with and observe all Federal and State or local laws, or ordinances, codes, rules or regulations pertaining to this MOU and performance thereof.

14. **Authority:** The Town Manager under whose supervision the Parks and Recreation Department is assigned or his/her designee shall have authority to act on behalf of the Town and shall be the interpreter of the requirements of this MOU on behalf of the Town. The first point of contact for RFPA shall be the Parks and Recreation Director.

15. **Independent Contractor:** Employees and volunteers of RFPA shall not be deemed to be employees of the Town. RFPA will supervise its employees and volunteers and will disburse all
payrolls, taxes, licenses, insurance, uniforms and all other expenses incurred by RFPA in the performance of this MOU.

16. **Governmental Immunity/Budgeting.** Nothing herein shall be interpreted as a waiver of governmental immunity, to which the Town would otherwise be entitled under § 24-10-101, et seq., C.R.S., as amended. All of the Town's obligations pursuant to this MOU are and shall remain contingent upon annual budgeting by the Town, and nothing in this MOU shall be construed as a multi-year financial obligation of the Town.

17. **Ownership/Liens.** At all times, the North Face Park, and all property and improvements within that, including the proposed new Pickleball Court Complex, shall be the property of and wholly owned by the Town, and RFPA's rights in such property shall be limited to the usage allowed for above, for so long as this MOU is effect. RFPA may not and shall not pledge its interests pursuant to this MOU in support of any loan transaction, nor create any other liens against Town property or any improvements located upon Town property. Upon termination of this MOU, the Town shall have sole discretion regarding future use and/or disposition of any improvements installed upon the North Face Park property pursuant to this MOU.

**TOWN OF CARBONDALE**

BY: __________________________

Dan Richardson

TITLE: Mayor

DATE: __________________________

ATTEST:

___________________________

Cathy Derby, Town Clerk

**ROARING FORK PICKLEBALL ASSOCIATION**

BY: __________________________

Cilla Dickinson

TITLE: RFPA Board President

DATE: __________________________
Site Plan
Roaring Fork Pickleball Assoc.
Carbondale, Colorado
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: 4-9-2019

TITLE: Public Hearing - Unified Development Code (UDC) Zone Text Amendments - Wireless Facilities

SUBMITTING DEPARTMENT: Planning Department

ATTACHMENTS:
- Ordinance No. 7, Series of 2019
- Draft Wireless Facilities Regulations (PROVIDED SEPERATLY)
- Other UDC Amendments (PROVIDED SEPERATLY)
- Planning Commission Minutes 3-14-2019 - Excerpt
- Planning Commission Minutes 3-28-2019
- Resource Material
  - Aspen Daily News Article dated 1-16-2019
  - Aspen Daily News Article dated 1-23-2019
  - Castle Rock Brochure – Small Cell Technology – FAQs
  - Letter from Glenwood Springs City Attorney 7-18-2018
  - River Oaks Communications Corp Memo 7-24-2018
  - National League of Cities – Small Cell Wireless Technology

BACKGROUND

This is a public hearing for the purpose of considering amendments to the Unified Development Code (Chapter 17 of the Carbondale Municipal Code) to include regulations related to Wireless Facilities, including Small Cell Antenna regulations.

The Board is required to hold a public hearing and approve the amendments or deny them. The Board may also continue the public hearing.

The Draft Wireless Facilities Regulations can be found at the following link:

https://www.carbondalegov.org/Draft%20Wireless%20Facilities%20Regulations.doc

The Planning Commission held public hearings on these amendments on March 14, 2019 and March 28, 2019. After these two public hearings, the Planning Commission unanimously recommended approval of the amendments. The minutes of the meetings are attached.
DISCUSSION

The latest generation of wireless technology is called Fifth Generation or 5G. 5G is intended to provide faster wireless service and support more wireless connections. 5G utilizes small cell antenna technology.

As a result, wireless providers such as Verizon, AT&T, T-Mobile, etc., will most likely be requesting approval to allow the installation of small cell antennas. Because of their small coverage area, there needs to be a greater number of small cell facility sites than traditional cellular towers. The small cell antennas can be placed on buildings, light poles, towers and new base stations or alternative towers. They are generally three cubic feet in size.

There have been recent developments in federal and state law which requires that the Town address small cell wireless facilities in the UDC.

State law was created in 2017 to allow small cell facilities as a use-by-right in any zone district and created a 90-day timeframe in which the Town must act on a small cell facility application. The law also gives wireless providers the right to locate or collocate small cell facilities on light poles, traffic signals and similar infrastructure in the Town’s rights-of-way.

Recently the FCC approved new rules which took effect on January 14, 2019 imposing new “shot clocks” for the processing an application for small cell facilities. The timeline established by the FCC is 90 days from the date a complete application is submitted for new stand-alone facilities or 60 days for small cell facilities on city infrastructure.

In addition, under the FCC regulations, local governments have until April 14, 2019 to adopt regulations and design standards for new small cell antenna facilities. This means the Town would need to pass an ordinance at the April 9, 2019 Board meeting in order to be prepared for any application for a small cell wireless facility. An ordinance has been attached for the Board’s consideration. It is an “emergency ordinance” so it would be effective immediately.

AMENDMENTS

As a result of the State and federal regulations, Staff and Tarn Udall, the Town Attorney began drafting regulations for wireless facilities. The main changes to the UDC are:

- Adding definitions
- Establishing new uses in the Land Use Table
- Creating new review processes
- Adding design standards for wireless facilities and infrastructure associated with those facilities, i.e., base stations, towers, etc.

CHAPTER 17.08 DEFINITIONS

A number of definitions needed to be added to this chapter to address wireless facilities. Because the UDC is silent on wireless facilities, there is an extensive list of definitions. Because they are so specific to wireless facilities, the Planning Commission added a sub-section in the definitions section of the UDC so the definitions for wireless facilities are grouped together.

If Board members aren’t familiar with this technology, it may be helpful to search “small cell antenna images” on the internet. A significant amount of material and pictures will come up. It is interesting to see how small cell wireless facilities are being deployed in other communities.

TABLE 4.2-1 ALLOWED USES

We have included a new section in Table 4.2-1 called “Wireless Facilities.” We also added a new table called “Table 4.2-2: Allowed Uses – Rights-of-way.”

These tables list the various uses associated with small and non-small wireless facilities. We made the small cell antenna and associated infrastructure (base station, alternative tower structure and base station) permitted uses if they are in the Town’s right-of-way. On the flip side, other facilities such as towers on private property, base stations on private property, and non-small antenna are listed as special review uses. The intention is to provide an incentive to the providers to utilize the least-impactful type of facilities.

The one exception is allowing wall-mounted and roof-mounted small cell wireless facilities as a permitted use on private property. (This would, of course, require permission from property owners). These types of facilities may provide more options for providers when deploying small cell facilities.

CHAPTER 17.05 DEVELOPMENT STANDARDS

The draft regulations also include development standards for wireless communication facilities. There are several methods to accommodate the infrastructure necessary for small cell wireless facilities while trying to maintain community aesthetics. Design standards in the draft regulations include the following techniques:
Screening and matching architecture, colors and texture of buildings and matching or mimicking building materials.

Landscape screening requirements.

Maximum heights.

Maximum setbacks.

Maximum projections from sides of structures and buildings.

Utilizing existing poles, traffic signals, street lights.

Allowing alternative tower, i.e., clock tower, artificial trees, light poles, etc.

Collocation (requiring that providers share infrastructure)

Spacing requirements between wireless facilities

There are development standards for every use listed in the allowed uses tables.

CHAPTER 17.02 ADMINISTRATION

Another item which needed to be addressed is how land use applications for wireless facilities are processed. Staff originally tried to utilize existing processes. However, because of the uniqueness of submittal requirements and review processes set out under State and Federal law, we chose to create a new process section in Chapter 17.02 called UDC Section 2.5.5. Wireless Facilities.

This section includes:

- Purpose Section
- Applicability
- Summary Flowchart
- Submittal Requirements
- Review and Action
- Criteria
- Lapsing Period for Approval

There is a process for every use listed in the allowed uses table.

AMENDMENTS REQUIRED FOR OTHER SECTIONS OF THE UDC

In addition to the sections discussed above, there were other sections of the UDC which needed some amendments as a result of new wireless facility regulations. These sections include:
AMENDMENTS TO THE UNIFIED DEVELOPMENT CODE

Section 2.4.1.C.3.b states amendments to the UDC may be approved if the Town finds that all the following approval criteria have been met:

1. The proposed amendment will promote the public health, safety, and general welfare;

2. The proposed amendment is consistent with the Comprehensive Plan and the stated purposes of this Unified Development Code; and

3. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions.

OTHER

Local governments are preempted from regulating wireless service facilities on the basis of environmental effects. Among other restrictions on local control of wireless facilities, existing FCC regulations prohibit a state or local government from regulating “the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” Small cell facilities are subject to these existing regulations governing radio frequency emissions exposure.

This is a complex topic. Attached is some resource material that Planning Staff found useful in understanding the issues related to 5G technology and the small cell wireless facilities associated with that technology.

FISCAL ANALYSIS

The fiscal impacts have not been explored. The Town may charge a fee to allow use of the Town’s right-of-way but that has not been discussed.

RECOMMENDATION
Staff recommends the following motion: **Move to approve Ordinance No. 7, Series of 2019 amending the Unified Development Code to include regulations related to wireless facilities with the following findings:**

**Findings**

1. The proposed amendments will promote the public health, safety, and general welfare;

2. The proposed amendments are consistent with the Comprehensive Plan and the stated purposes of the UDC as they provide updated regulations which address new technology to the UDC; and

3. The proposed amendments are desirable because of changing conditions, including technology advancements and the current legal landscape, and the need to adopt regulations that will effectively manage the deployment of wireless communication facilities within the Town.

Prepared By: Janet Buck, Planning Director
ORDINANCE NO. 7
SERIES OF 2019

AN EMERGENCY ORDINANCE OF THE BOARD OF TRUSTEES OF THE
TOWN OF CARBONDALE, COLORADO AMENDING CHAPTER 17 OF THE
CARBONDALE MUNICIPAL CODE (THE UNIFIED DEVELOPMENT CODE)

WHEREAS, in March 2016, pursuant to Ordinance No. 4, Series of 2016, the Board of Trustees of the Town of Carbondale adopted a new “Unified Development Code” and codified the same as Chapter 17 of the re-codified Carbondale Municipal Code (the “UDC”); and

WHEREAS, wireless communications service providers are “densifying” their wireless networks by installing small cell technology to meet the demand for more bandwidth and to improve wireless coverage and capacity; and

WHEREAS, deployment of small cell technology began in 2018 and is accelerating around the world; and

WHEREAS, the UDC does not include regulations related to wireless facilities; and

WHEREAS, pursuant to state statute enacted in 2017, small cell facilities are a use-by-right in any zone district, a local government must act on an application for a wireless facility within a certain amount of time, and providers have the right to locate or collocate small cell facilities on a municipality’s light poles, traffic signals, and other infrastructure within the public rights-of-way; and

WHEREAS, the Federal Communication Commission (FCC) approved new rules, effective January 14, 2019, which include certain requirements for local governments, including timelines for processing small cell applications and limitations on the permit fees charged to providers; and

WHEREAS, the FCC also issued an order (the “FCC Order”) to clarify that municipalities are prohibited from adopting regulations that “materially inhibit” the deployment of a particular small cell wireless facility; and

WHEREAS, pursuant to the FCC Order, local governments must have design standards for small cell facilities in effect by April 14, 2019; and

WHEREAS, after posting and publishing notice in accordance with the Home Rule Charter and Chapter 17 of the Carbondale Municipal Code, the Planning and Zoning Commission conducted a public hearing on March 14, 2019 concerning these potential amendments to the UDC, and such public hearing was continued until March 28, 2019 when the Planning and Zoning Commission recommended approval of the same; and
WHEREAS, after posting and publishing notice in accordance with the Home Rule Charter and Chapter 17 of the Carbondale Municipal Code, the Board of Trustees of the Town of Carbondale conducted a public hearing concerning these potential amendments to the UDC on April 9, 2019; and

WHEREAS, during said hearing, the Board of Trustees heard and considered the statements of Town staff, the Planning and Zoning Commission’s recommendation, and any members of the public who wished to speak, and reviewed and considered all other information presented, all as required by law; and

WHEREAS, the Board of Trustees finds and determines that these proposed amendments to the UDC should be adopted because:

1. The proposed amendments will promote the public health, safety, and general welfare;

2. The proposed amendments are consistent with the Comprehensive Plan and the stated purposes of the UDC as they provide updated regulations which address new technology to the UDC; and

3. The proposed amendments are desirable because of changing conditions, including technology advancements and the current legal landscape, and the need to adopt regulations that will effectively manage the deployment of wireless facilities within the Town; and

WHEREAS, Section 3-7 of the Carbondale Home Rule Charter authorizes the Board to immediately implement an emergency ordinance by affirmative vote of every member of the Board of Trustees present at any regular or special meeting or by affirmative votes equal to a quorum plus one, whichever is less, so long as the ordinance states that it is an emergency ordinance and describes the nature of the emergency; and

WHEREAS, pursuant to Section 3-7 of the Carbondale Home Rule Charter, the Board of Trustees is authorized to adopt and enforce such emergency ordinances as may be required to protect the public peace, health, or safety; and

WHEREAS, the Board of Trustees of the Town of Carbondale has determined that it is in the best interest and will promote the health, welfare and safety of the citizens of the Town of Carbondale to adopt these proposed amendments to the UDC.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that:

1. Chapter 17 of the Carbondale Municipal Code is hereby amended to include the changes set forth in the updated version of the UDC dated March 19, 2019 and incorporated herein by reference. Copies of said updated Unified Development Code
are available for public viewing at Carbondale Town Hall, 511 Colorado Avenue, Carbondale, Colorado.

2. Because the Board of Trustees finds that it is necessary to adopt this ordinance as an emergency ordinance to protect the general health, safety, and welfare of the citizens of the Town, this ordinance shall become effective immediately upon passage.

INTRODUCED, READ, AND PASSED this 9th day of April, 2019.

TOWN OF CARBONDALE

_________________________
Dan Richardson, Mayor

ATTEST:

______________________________
Cathy Derby, Town Clerk
PUBLIC HEARING – Unified Development Code (UDC) Zone Text Amendment – Wireless Facilities

Janet introduced one of the Town Attorneys, Tarn Udall of Holland and Hart. Tarn said that she works with Mark Hamilton and that she has been helping Janet with the wireless facilities regulations.

Janet stated that this is a public hearing for the purpose of considering amendments to the UDC to include regulations related to Wireless Facilities, including Small Cell Antennas.

Janet said that the Commission is required to hold a public hearing and recommend approval of the amendments or recommend denial. She stated that the Commission may also continue the public hearing.

Tarn outlined the following:

- By way of background, the Town is developing these regulations in response to recent developments in federal and state law which require that the Town address certain types of wireless facilities.
- State Statute
  - enacted in 2017 to address small cell facilities and networks and access to rights of way
  - statute gives providers right to locate small cell facilities on municipal infrastructure in public rights-of-way
  - makes small cell facilities a use-by-right in any zone district
  - shortens timeframe that municipalities must act on an application
    - 90 days for complete applications for new small-cell facilities
    - 150 days for other facilities
  - treat installation of multiple facilities as a consolidated application/single permit
  - no discrimination amongst providers
- FCC
  - on the federal level and more recently, the FCC approved new rules to streamline deployment of small cell technology
    - new "shot clocks" for processing small cell applications
      - 60 days for small cell facilities on city infrastructure
      - 90 days from when complete application – new standalone
      - 150 days for new wireless facilities – excluding small cell
    - limiting permit fees municipalities can charge providers
  - at same time, FCC issued a declaratory ruling, to clarify that federal statute prohibits municipalities from adopting regulations that "materially inhibit" small wireless facility deployment
  - municipalities have until April 14 to adopt regulations/design standards for new small cell antenna facilities
FCC order is being challenged in federal court

Janet stated that the latest generation of wireless technology is called Fifth Generation or 5G. She said that 5G is intended to provide faster wireless service and support more wireless connections. She said that 5G utilizes small cell antenna technology.

Janet explained that as a result, wireless providers such as Verizon, AT&T, T-Mobile, etc., will most likely be requesting approval to allow the installation of small cell antennas. She said that because of their small coverage area, there needs to be a greater number of small cell facility sites than traditional cellular towers. She stated that the small cell antennas can be placed on buildings, light poles, towers and new base stations or alternative towers. She said that they are generally three cubic feet in size.

Janet said that Tarn Udall and I began drafting language to address wireless facilities. She stated that as we began this work, we found that the UDC is mostly silent on wireless facilities. She explained that in order to bring the UDC up to date with wireless facility technology, the draft code amendments also include regulations on other wireless facilities.

Janet said that the draft regulations are a work in progress. She stated that we anticipate it will take two meetings for the Planning Commission to review them, provide direction to Staff and finalize them for the Board’s consideration. She explained that there are some threshold questions which we would like the Commission to weigh in on so Staff can complete the draft regulations.

Janet stated that the main changes to the UDC would be:

- Adding definitions
- Establishing new uses in the Land Use Table
- Creating new review processes
- Adding design standards for wireless facilities and infrastructure associated with those facilities, i.e., base stations, towers, etc.

Points of Discussion

- Clarify whether the wall-mounted and roof-mounted facilities are small cell or non-small cell
- Check Aspen’s regulations
- Can you prohibit wall- or roof-mounted wireless facilities in R/LD and OTR
- Do not allow non-small in the R/LD and OTR zone districts
- Utilize conditional use permits instead of special use permits
- Will old technology still be relevant? The answer is yes
- Since the rights-of-way aren’t zoned, is there a way to classify them?
• Street hierarchy mapping, i.e., alley, collector, arterial, sub-arterial was suggested
• Higher level of camouflage in street verses alley
• Protect the alleys
• Alleys can provide adequate separation
• Japan was overrun with wireless facilities and it changed their character
• How restrictive can the Town be? That is the preference.
• It is easier to loosen regulations rather than make them tighter
• Possible to prohibit small cell towers?
• Look into manhole cover or underground only
• Incentivize them to work with private property owners
• Do we have ability to determine what information is collected? Surveillance City?
• Will a provider overwhelm Staff with applications?
• Sequencing rules, cap on number applications submitted
• Boxes and transformers can be more of an issue

**Motion to Continue the Public Hearing to March 28**

Jeff made a motion to continue the public hearing to March 28, 2019. Ken seconded the motion and it was continued unanimously.

**Staff Update**

Janet gave an update on the small cell wireless code she has been working on.

**Commissioner Comments**

Jay indicated that he would not be at the 4-11-2019 meeting.

Nicholas said he would not be at the March 28, 2019 meeting.

**Motion to Adjourn**

A motion was made by Ken to adjourn. Jeff seconded the motion and the meeting was adjourned at 8:34.
MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday March 28, 2019

Commissioners Present:
Michael Durant, Chair
Ken Harrington, Vice-Chair
Jade Wimberley
Marina Skiles
Jay Engstrom

Staff Present:
Janet Buck, Planning Director
John Leybourne, Planner
Mary Sikes, Planning Assistant

Commissioners Absent:
Nicholas DiFrank (1st Alternate)
Tristan Francis (2nd Alternate)
Nick Miscione
Jeff Davlyn

Other Persons Present

The meeting was called to order at 7:00 p.m. by Michael Durant.

March 14, 2019 Minutes:

Ken made a motion to approve the March 14, 2019 minutes. Michael seconded the motion and they were approved unanimously with Jade and Marina abstaining.

Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

CONTINUED PUBLIC HEARING – Unified Development Code (UDC) Zone Text Amendment – Wireless Facilities

Janet said that this is a continued public hearing for the purpose of considering amendments to the Unified Development Code (Chapter 17 of the Carbondale Municipal Code) to include regulations related to Wireless Facilities, including Small Cell Antenna regulations.

Janet outlined some of the items that were changed after the last meeting:

- Table of allowed uses on page 6 of the regulations. She said the Commission had wanted the regulations as restrictive as possible that would be allowed under the State and FCC regulations. She continued by saying that we are required to allow small cell facilities in our rights-of-way and in all zone districts. She stated that we need to have design standards in place otherwise we will have to accept
a provider’s proposal. She said that small cell facilities, small cell wall and roof mounted are all permitted uses. She said that we dialed back the non-small cell wireless facilities because the State and FCC are not regulating those. She said that we have created a separate table for rights-of-way. She said that once she had gotten the allowed uses chart put together then that allowed her to go back and make sure that every use had a definition, a design standard and a procedure for review. She said that when she was drafting the design standards that she took Aspen’s regulations because they have the strictest ones as far as camouflage and concealment of the facilities.

- Page 10 states that providers would need to give us a narrative to explain where they want to put the wireless facilities because there will be a number of them and that they will need to have some idea of where they would want them to go to provide the coverage.

- Page 6 of allowed uses, she said that we have non-small cell wall mounted or roof mounted wireless facilities. She that they are special review in mainly the R/MD, R/HD and the commercial zone districts. She said that we were not required to put those in our regulations but that we wanted to do it because of the previous application with Verizon on the Creamery building. She said that we did not have any regulations in place to control the design as well as the placement of that facility. She said that the small cell wireless we have as a permitted use across the board.

- Page 14 of the development standards or the design standards for small and non-small cell wireless facilities. She said that it is limited to wall mounted facilities, which are only allowed on multi-family structures containing eight or more dwellings or an institutional use. She said that it seems that those standards would not allow a non-small cell tower to be on the Creamery building.

Michael asked what is an institutional building.

Janet explained that a small cell antenna is about the size of a pizza box. She said that Holy Cross will not allow these to be put on their street lights so they are going to be looking for buildings, with the property owner’s permission. She said that we want to allow this because north of the railroad tracks it is all Holy Cross. She said that instead of having new free standing poles in the rights-of-way they could use buildings to provide more options. She said that it seems like small cell antennas should be allowed on all buildings. She said that non-small antennas should be allowed on a commercial building like the Creamery.

Janet read the definition of an institutional building, it is a civic building, a club, a lodge, a community center, convention hall, country club, library, museum and religious use. She said that it seems like there is a gap, which she can fix. She said that she also thinks that instead of having this limitation in the design standards it should really be in use-specific standards. She said that for example a drive-through bank we have the use in the land use table but then we bring it to the use-specific standards to limit it to being only allowed in the CRW and PCC zone districts.
Janet said that she went through the UDC and actually created redlines adding them to the following:

- table of contents
- processes in the summary table
- common review procedures
- definitions

There were no questions for Staff.

There were no members of the public present.

**Motion to Close Public Hearing**

A motion was made by Marina to close the public hearing. Jay seconded the motion and it was approved unanimously.

**Points of Discussion**

- Create separate definition chapter 8.4 for wireless facilities.
- Base Station is a Special Use, which also contains components of equipment.
- Difference between standards and use specific standards, used residential standards as a template. Create use specific standards to cross reference them to the development standards?
- Facilities could be in manhole covers as technology progresses.
- Page 14, roof mounted small cell, add commercial and institutional buildings, with owner’s permission.
- Switch boxes or additional equipment concealment, does it include all equipment? Does it fall under accessory equipment on page 9?
- Create a new category for accessory equipment for anything that is not ground based, all of which needs to be camouflaged.
- In California municipalities are fighting the 5G technology because of possible health hazards. There are Federal lawsuits currently pending.
- 5G could be on many houses, with owner’s permission.
- Colorado has passed a statute which stated that we must allow the small cell facilities as a permitted use in all zone districts and that we can attach conditions.
- Use Table spells out that everything that is small cell is permitted and everything that is not small-cell is a Special Use.
- Base station is a Special Use.
- Base Station and Towers overlap.
- Remove the S for Special Use from R/MD, in the Table on page 6 for non-small cell.
- Separate small and non-small cell, C refers to non-small cell wall mounted wireless facilities and D to non-small cell roof mounted facilities. Add commercial and institutional buildings.
• Take the non-small cell roof mounted standards paragraph and put in use specific standards.
• Non-small cell, limit of two per building.
• Holy Cross does not allow on their poles for everything north of the bike path.
• More obvious on poles, better on buildings.
• Do not allow installations on side walls.
• Accessory equipment i.e., switch box, junction box, electric cables need to be camouflaged and concealed.
• Create a new accessory category.
• Right-of-way required to make a use by right.
• UDC Sec. 5.13.5 small and non-small cell permitted in all districts.
• Page 9, accessory equipment not to exceed 350 square feet, change to 50 square feet.
• Contact Jett @ Pinnacle Consulting for clarification of equipment.
• What noise is produced from what equipment?
• Page 12 Sec.15.13.3 Define public art, camouflage with art.
• Page 17 Sec. 2.5.5 Wireless facilities, separate exhibit item D, second paragraph typo of hanging #2.
• Consolidate provider applications, place a limit.

Motion

Ken made a motion to recommend approval of the Wireless Facilities Regulations as well as the redlines in other sections of the Unified Development Code with changes discussed and findings in the Staff report. Marina seconded the motion and they were approved unanimously.

Staff Update

Janet said that the Board unanimously approved the UDC Amendments on March 19. Michael said he attended that Board meeting and the Board thanked the P&Z for their hard work. Janet said that she has been working with Clarion on the redlines.

Commissioner Comments

There were no comments.

Motion to Adjourn

A motion was made by Ken to adjourn. Marina seconded the motion and the meeting was adjourned at 8:19.
Aspen readies itself for 5G and small cell technology

Curtis Walker, Aspen Daily News Staff Writer  Jan 16, 2019

Cellular antennas on the roof of a building in downtown Aspen. The city of Aspen is updating its wireless infrastructure code to prepare for the coming wave of 5G small cell antennas.

Craig Young/Aspen Daily News

The city of Aspen is working to update its rules governing wireless infrastructure in the wake of a Federal Communications Commission edict that streamlines the process for deploying new antennas for 5G wireless service.

The FCC order, which was handed down in September and took effect Monday, shortens a local government’s timeframe to review cellfiai applications and prevents local governments from collecting excessive permitting and use fees.

"Small cell" antennas to facilitate 5G wireless networks, which are capable of carrying greater amounts of data at faster speeds, will soon be sweeping the nation. Effective deployment of the technology requires a greater density of antennas than what is needed for existing wireless and cellular technology.

FCC rules mandate that wireless providers have access to public rights of way to install the antennas. Currently, most cellular infrastructure in Aspen does not use local rights of way, opting instead for building rooftops. That will likely change with the greater densities required for 5G.

Even with the federal guidelines designed to aid carriers in their negotiations with local governments, and thus streamline the rollout of 5G, cities can still write rules for spacing, height and other zoning concerns. But municipalities cannot ban the technology, assistant city attorney Andrea Bryan said.
Bryan, Philip Supino from the community development department and Paul Schultz, the city’s director of information technology, will meet with city council in a work session on Tuesday, Jan. 22, to discuss the small cell/5G issue and introduce new code language to regulate the antennas. Bryan said she hopes to have the new code adopted by early March.

The new code will encourage "co-locating" infrastructure for multiple carriers on the same site, using a "neutral host," Bryan and Schultz said.

Schultz said the city aims to serve the somewhat competing goals of having the best possible wireless service while minimizing visual impacts and clutter.

He noted that in some cities in Europe, cellular antennas are placed underground in high-density areas. For the antennas to have the greatest range, however, they need to be 25 feet in the air.

The 5G small cells need to be connected to a fiber-optic cable, Schultz noted. The city’s fiber-optic network could be leveraged to minimize construction impacts.

The implications of 5G are widespread. The technology could replace the cable Internet most people use at home, and it is also needed to support a future of self-driving cars and an "internet of things," where everyday devices communicate with one another.

There are also health concerns about increased microwave radiation from small cell antennas. Schultz said that the FCC limits the amount of power such devices can put out.

Bryan said that while wireless providers have made inquiries as of late concerning new antenna sites, no formal applications have come in.

Curtis Wackerle is the editor of Aspen Daily News. He can be reached at curtis@aspendailynews.com or on Twitter @CurtisWackerle.

Curtis Wackerle
Editor
Aspen takes proactive measures to prevent cellular blight

Carolyn Sackariason
January 23, 2019

Aspen City Council on Tuesday took steps to update its wireless infrastructure regulations in anticipation of service providers coming here and installing small-cell sites that could, if unchecked, end up as blights around town.
The city is rewriting its land-use code in response to the wireless networks moving toward 5G technology, which involves antennas, radios, electrical connections and fiber optic cable connections.

Paul Schultz, the city's information technology director, told council all of that infrastructure among four providers could be placed every 150 feet throughout town if unregulated.

"It could get very dense," he said. "We feel this is a very important topic that we need to work as hard as we can ... really do the best we can, because I believe left to its own devices, it may not turn out the way we in the community want it to."

5G, or fifth generation, technology promises to be faster and will support more wireless connections, among other benefits.

The network to support it requires what's called "small-cell infrastructure." It can be installed on buildings, light poles and under the ground using special manhole covers.

State law passed in 2017 gives providers the right to locate small-cell facilities on a city's lights poles, traffic signals and in public rights-of-way, according to a memo by Schultz and Andrea Bryan, Aspen's assistant city attorney.

The law also allows providers by right to install such facilities in any zone district and shortens the timeframe that the city must act on an application to 90 days, according to Schultz.

More recently, the Federal Communication Commission approved new rules, which took effect Jan. 14, that impose what are called "shot clocks" for the processing of small-cell applications.

FCC rules say that the city must allow the application being submitted for new stand-alone facilities within 90 days, or 60 days for facilities collocated on city infrastructure.

The new FCC order also clarifies that municipalities are prohibited from adopting regulations that "materially inhibit" a particular small wireless facility deployment, according to Schultz.

Two out of four of the major wireless communications service providers have already approached the city regarding small-cell deployment.

Schultz said small-cell infrastructure can be deployed tastefully and unobtrusively, or haphazardly and intrusively.
Community aesthetics, the integrity of historical districts, the character of commercial and residential areas and the natural character of parks could be undermined by the installation of above-grade infrastructure, Schultz said.

Communities have approached regulations in a variety of ways, some of which could be used as models for Aspen, and others are a lesson in what waiting to address the changing wireless landscape could result in.

Council members understood Schultz’s message that waiting could result in infrastructure that is inconsistent with Aspen’s small town and historic character.

They directed staff to incorporate into the land-use code regulations that emphasize camouflaging new small-cell sites and the collocation of existing infrastructure, as well as trying to minimize what can be done in historical districts.

The city has hired a telecommunications attorney to evaluate the current code and make suggested changes.

Jessica Garrow, the city’s Community Development director, told council that she, Bryan and Schultz are not wireless experts and need additional outside help to rewrite the land-use code. Council was supportive of that financial ask.

"This is potentially a very complicated and detailed code amendment and that’s really being driven by (how) we want to make sure we protect the city, we want to protect the community character as much as possible while complying with these state and federal rules," she said.

A draft code amendment has been crafted and will be taken to the city’s Planning and Zoning and Historic Preservation commissions next month.

Code changes also will include an expedited review process and add design standards for wireless communications facilities.

Pursuant to the FCC order, local governments have until April 14 to adopt design standards for small-cell facilities, which means the city would need to pass an ordinance adopting new code amendments with design standards by March 11 at the latest.

Schultz and Bryan recommended that the city work with providers to share and co-locate wireless infrastructure that leverages existing assets like buildings, electrical lines, fiber optic cables, light poles and manholes.

Staff also plans to meet with vendors to identify preferred designs that may be "pre-approved" for small cells and begin the process of drafting design guidelines.
Small Cell Technology Frequently Asked Questions

The Town is updating its Municipal Code to provide for construction of small cell facilities in Castle Rock, as allowed by State and Federal laws. Following are answers to some frequently asked questions about this topic.

What is a small cell facility?
A small cell facility is an antenna, along with accessory equipment, that provides cellular and data coverage to smaller geographic areas, usually benefitting high-use or poor coverage areas within the larger cellular network. Because of their smaller coverage area, use of small cells requires a greater number of facility sites than traditional cellular towers.

Small cell antennas are generally the size of a suitcase and must be under 20 cubic feet in total volume, per State law. They typically are located on streetlights or traffic signals. Like other utilities, the equipment is allowed in public rights of way, per State and Federal laws.

What is the Town’s role with regard to small cell facilities?
The Town’s Municipal Code is being updated to provide regulations for small cell facilities, including processing applications, setting priorities on where the facilities are located; and establishing design standards.

Why is there increased interest in installing small cell facilities?
Mobile data traffic has grown significantly and is expected to continue increasing at a rapid rate with the proliferation of mobile
devices. Wireless carrier companies say that existing infrastructure has become congested and cannot meet their customers’ needs. Small cell facilities can help address this issue.

How is the Town handling small cell facilities proposed in Town rights of way?
Town staff will review applications in accordance with State and Federal laws, as well as Town Code and technical documents. State law requires the Town to consider applications from all providers equally, and to provide bulk processing of permit requests in 90 days or less, rather than requiring an individual permit process for each small cell facility. A hearing before Town Council would not be required for small cell facilities under the proposed Code.

Can the Town limit or standardize small cell facilities?
The proposed Code encourages locating small cell facilities within public rights of way and on public property, and in nonresidential areas, and attempts to minimize the number of facilities needed. Further, it attempts to minimize the visual impact of the facilities through careful design, siting, landscape screening and innovative camouflage techniques.

Within the proposed Code, the Town’s preference is that small cell facilities in the right of way be located on an existing streetlight or on a new pole before being located on a traffic signal. In addition, the code contains spacing requirements between facilities that is consistent with the current spacing of streetlights. The height of any new poles constructed would be limited to 40 feet or less.

For a facility to be located in the right of way, the provider would need to enter into a lease agreement with the Town, through which the Town could impose additional requirements.

Can small cell facilities be installed on existing poles or buildings on private property?
This is possible, however, space on existing poles is becoming scarce – especially as infrastructure is increasingly being located underground rather than overhead. Providers also say that negotiations with individual private property owners is too complex and time-consuming to deliver on customers’ current needs.

Additionally, the technology currently being used often requires separation between facilities to avoid signal interference.

Will large cell towers still be needed as small cells come online?
The large cell towers that have provided cellular service for years are a different form of cellular technology that will still be necessary for service, even if small cell facilities are available. The larger towers serve larger geographic areas and are good for voice service, but their data signal can degrade over distance. Small cells provide strong voice and data service within a limited geographic area. The proposed Code update provisions relate to large "macro" cell towers as well.

Who can I contact for more information?
Contact the Town’s Development Services team at 720-733-3566 or planning@CRgov.com.
MEMORANDUM

DATE: July 18, 2018
TO: Mayor and Council, City of Glenwood Springs
FROM: Karl Hanlon, City Attorney
RE: Cell Tower Regulation

There has been significant interest in the City’s ability to regulate the location and design of wireless communication facilities inside the city limits. In the most recent version of the proposed development code we are attempting to thread a needle between what is required by both State and Federal law as well as what is allowed in terms of regulation at the local level.

The controlling Federal regulation is found at 47 USC §332(c)(7) - Preservation of Local Zoning Authority, while preserving certain aspects of local control, it contains the following provisions which affect a local governments ability to regulate these facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless
service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

The three most important concepts to take away from these limitations are that you can’t prohibit based on emissions, you can’t prohibit or have the effect of prohibiting the provision of services as a result of your regulations, and that you must provide substantial evidence as to any denial. The substantial evidence standard is extremely high.

However, federal regulations are not the only regulations preempting local authority with regard to wireless facilities. In 2017, the State Legislature felt that there was insufficient state-wide access for small cell facilities and broadband facilities. These facilities are defined in CRS 29-27-402 (copy attached). By adopting the revised statutory language contained in CRS 29-27-401 et seq., and CRS 38-5.5-101 et seq., the State Legislature declared that these were matters of state-wide concern thus preempting the authority of even the City of Glenwood Springs as a constitutional home rule municipality.

Specifically, CRS 29-27-404 (3) now requires that small cell facilities be a permitted use in every zone district. Strict timelines for processing applications are now required. CRS 29-27-403. Telecommunication providers have a right to use public rights-of-way and political subdivisions cannot create or erect unreasonable requirements for entry to their rights-of-way. CRS 38-5.5-103. Telecommunication and broadband providers also have a right to locate or co-locate on a local government entity’s light poles, utility poles, and traffic signals. CRS 38-5.5-104.5.

In light of the foregoing, the amount of regulation that can be applied is extraordinarily limited at this time. As a result, the regulations you are considering with the adoption of the new development code, while acknowledging these limitations, also try to provide sufficient design guidelines to provide some protection to our community.
MEMORANDUM

To: NMPP Energy
From: Bob Duchen - Vice President, River Oaks Communications Corporation
Date: July 24, 2018
Subject: The Impact of “Small Cells” on Your Communities

Introduction

Wireless service providers need to deploy small cells to enable their networks to function better. Usage of cell phones for video, voice and data, along with other mobile devices (such as laptops and iPads), has caused the providers to deploy more network equipment. Cell phone and data usage will continue to grow exponentially during the coming years.

Verizon Wireless, AT&T Wireless and other service providers are actively looking to deploy “small cells” to add capacity to their existing networks. The logical placement for these antennas, poles, fiber optic cables and equipment cabinets is in City Rights-of-Way. This poses a host of challenges and complexities for cities.

“Small cells” are not always small. The coverage area is, but not always the equipment. Legislation in numerous States allows the wireless service providers to install equipment cabinets up to 28 cubic feet in volume. As a practical matter, that is quite large and unsightly (especially if it shows up in front of your house).

It is critical for each of you to know what your rights and responsibilities are in your particular State. Small cell legislation has passed in Colorado, Iowa and Kansas. We worked closely with the League of Nebraska Municipalities in 2017 to defeat LB 389 (the small cell bill). It failed again in 2018 but will probably reappear next year.

North Dakota and Wyoming do not have small cell legislation. The hope is that municipalities will continue to enact Small Wireless Facilities Ordinances in those two States which may obviate the need for any small cell legislation.

The Players

Industry -- Industry claims that municipalities are taking too much time to grant approvals and unreasonably delaying the deployment of wireless infrastructure which is detrimental to providing services to consumers and businesses. Industry is making arguments to State Legislatures that local governments are inhibiting the deployment of 4G and 5G technology and that small cell legislation will bring broadband to rural America. That roll-out depends on fiber, not small cells.

Local Governments -- Cities and Counties have been approached by Mobilitie, an infrastructure provider. That company wanted to install 75’ or higher poles in public Rights-of-Way without conforming to local
zoning requirements. Other companies, such as Verizon Wireless, want to deploy small cells on existing poles. Communities are justifiably concerned about maintaining their regulatory authority and aesthetics.

**How did this arise?**

Mobilitie, LLC filed a Petition for Declaratory Ruling on November 15, 2016. That proceeding is still pending before the Federal Communications Commission.

For those of you who are not familiar with this scenario, Mobilitie has taken the position in numerous States that it is either a public utility or a provider of services such as broadband. Local governments have pushed back and asserted that Mobilitie is an Infrastructure provider rather than an actual services provider and that it has to adhere to local zoning regulations and policies for ROW usage.

**What is the FCC’s perception?**

One of the FCC Commissioners has made public remarks favoring the industry. He seemed frustrated with local governments and an apparent lack of progress. It is also clear from the FCC’s language in WT Docket No. 16-421 that it thinks local governments are hindering and delaying the deployment of wireless infrastructure. Once again, inside the Beltway, cities and counties are being portrayed as an impediment to wireless technology deployment throughout our country.

**What about Congress?**

On June 28, 2018, Senators John Thune (R-SD) and Brian Schatz (D-HI) introduced a Bill entitled “Streamlining the Rapid Evolution and Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act S.3157” (“Act”). The Act limits local government participation in the decision-making process on small cell wireless facility siting and unreasonably limits compensation for cities. Cities would only have 10 days, rather than 30 days, to notify applicants in writing if an application is incomplete. There is also a “deemed granted” provision for applications not timely acted upon by local governments. Fees are limited (including application and Right-of-Way use fees) to actual and direct costs. Of further importance is that the Act does not grandfather existing agreements between cities and providers or tower companies.

**What about the money?**

Section 253 of the Communications Act provides that local governments can require telecommunications providers to pay compensation for use of public Rights-of-Way. The caveats are that the compensation must be fair and reasonable, competitively neutral and nondiscriminatory, and publicity disclosed.

Once again, the providers will claim that municipalities are asking for excessive and unfair fees for use of those Rights-of-Way. This is already being characterized at the FCC as a nationwide problem.

**What are your choices?**

Your local government could choose to do nothing and let the national organizations fight the battle. That is not a prudent course of action.
A better course of action is to proactively develop your own Wireless Communication Facilities Ordinance to control and manage the influx of requests that you are going to receive from the wireless providers. For those of you in States with small cell legislation (Colorado, Iowa and Kansas), you can develop templates that adhere to your State requirements and, at the same time, include provisions and concepts which are not preempted at the State level. Communities in other States (Nebraska, North Dakota and Wyoming) have the ability to develop Wireless Communication Facilities regulations which are not hamstrung by the State.

Biography

River Oaks Communications Corporation (“River Oaks”) has provided legal or consulting services involving cities, counties or towns in 38 States (Including the States covered by NMPP Energy). The company drafts regulatory documents and Agreements, re-writes and updates Wireless Communication Facilities Ordinances and Zoning Codes to conform with Federal law, and has assisted Municipal Leagues around the country on analyzing Small Cell Legislation. We have successfully developed Wireless Communication Facilities Ordinances that will enable the deployment of small cell equipment by the providers while, at the same time, preserving control of the Rights-of-Way and aesthetics (through stealth requirements) for local governments.

Bob Duchen, the co-founder and Vice President of River Oaks is a graduate of the University of Virginia School of Law, has spoken at Conferences throughout the country, authored articles for Municipal Leagues and presented Webinars covering a host of telecommunications issues. He will be presenting at NMPP’s Annual Conference next March in Lincoln.
Small Cell Wireless Technology in Cities

Introduction

From our connected homes, where everything is controlled by the internet, to our workplaces, where reliable broadband access is paramount for almost every type of job, technology is impacting every facet of our daily lives. Cities are inextricably linked to the internet, and the integration of new technologies promises better and more innovative ways to serve our residents.

With this seismic shift toward smart cities and the Internet of Things (IoT), reliance on wireless and wireline broadband infrastructure is becoming greater and greater. Mobile phones, IoT devices and other small wireless gadgets are becoming ubiquitous. Wireless data consumption has reached approximately 1.8 exabytes per month in North America alone, and that number is projected to grow six-fold by 2022. As various wireless providers maintain that the roll out of 5G Internet service is approaching, and the IoT proliferates with the connection of millions of new smart devices to the internet, cities must face the reality that to meet the increasing demands of residents, more wireless facilities and infrastructure must be deployed. With that reality, city officials must also face a number of policy, public safety, land-use and right-of-way considerations.

As cities navigate this rapidly-changing policy issue with both wireless and infrastructure providers and community residents, a number of considerations for the different stakeholders begin to emerge. This action guide from the National League of Cities (NLC) provides an overview of small cell technology, as well as guidance on how local governments can plan for, develop policy and processes around, and manage the deployment of, small cell wireless infrastructure. It will also provide city leaders with strategies for proactively engaging with wireless providers and residents to plan for small cell networks in their communities.

The Internet of Things in Connected Cities

Every consumer product and piece of infrastructure increasingly has the ability to sense surrounding stimuli, to communicate with other devices and people, and to draw on the computing and storage power of the cloud. This phenomenon has been dubbed the Internet of Things (IoT). The more smart devices and sharing platforms there are, the more data is generated about consumer preferences and habits. But what does this mean for cities? Smart cities are employing the same technology to connect their disparate utility, infrastructure and public service grids, generating real-time aggregate data. This, in turn, can help cities manage their programs and services more effectively and gauge their impact for residents, businesses and visitors immediately. The city of the future is an interconnected one, where devices communicate with one another in a constant stream of data that provides real-time information to the public and to the municipality.
The term 'smart city' sometimes seems to mean everything and nothing all at once, and a common question about the phenomena is some variation on, “what is a smart city?”. A smart city is a city that has developed technological infrastructure that enables it to collect, aggregate and analyze real-time data and has made a concerted effort to use that data to improve the lives of its residents and the economic viability of the community. Smart city initiatives often involve four components: the underlying communications infrastructure, information and communication technologies (ICTs) that generate and aggregate data; analytical tools which convert that data into usable information; and organizational structures that encourage collaboration, innovation and the application of that information to solve public problems. Examples include water or utility monitoring devices that promote efficient or sustainable usage, smart streetlights that double as gunshot spotters and communicate with city administrators when they need maintenance, and traffic control and management systems that streamline traffic congestion and traffic data to city transportation planners.
Small Cell Technology

What is small cell technology?
As wireless data usage continues to escalate, providers must find new and innovative ways to keep up with consumer demand for more speed and data capacity. One way to address the capacity crunch is by deploying “small cells,” a type of wireless technology for broadband infrastructure. Various federal, state and local laws define small cell differently. Generally, “small cell” refers to both the smaller coverage area of the wireless signal, and the smaller size of the infrastructure. Small cell installations generally cover much smaller geographic areas—measured in hundreds of feet—than the traditional macrocell towers that can cover miles in each direction. The antennas are much smaller than those deployed at macrocell sites, and are often attached to buildings, rooftops and structures in public rights-of-way (ROW), including utility and light poles and other street furniture. Pole- or ground-mounted equipment accompanying the antenna may also be needed and can be as big as a large refrigerator. This equipment may be in the ROW, or on other public or private property.

These facilities help to complement or stretch macrocell coverage and add capacity in high demand areas. Small cell infrastructure is typically deployed to alleviate capacity constraints where crowds gather or to cover targeted areas, including public squares and spaces, downtown pedestrian areas, parks, office buildings, campuses, or stadiums and arenas.

Macrocell vs. Small Cell:
Although they serve different purposes, macrocell and small cell technologies complement each other.

Macrocell: Traditional macrocell towers have a coverage area that spans several miles. They’re hard to miss, although their signal degrades towards the edge of their coverage areas.

Small Cell: Small cell technology is much more discreet, mounted on existing structures like rooftops and utility poles. Sometimes, they are accompanied by refrigerator-sized equipment. Because small cells only supply a few hundred feet of coverage, they are best suited for dense areas like downtowns.
What are some of the benefits to cities?

With the increasing usage of wireless devices and data, cities are facing increased demand for reliable wireless service. Small cell facilities can be used to increase the mobile broadband network capacity in cities. This improved service and capacity has many advantages, including economic competitiveness, a "tech friendly" reputation, and more opportunities to deploy smart city and IoT applications. Given that up to 80% of today's 911 calls are placed via wireless phones, robust wireless networks are also critical to public safety.⁶

What federal and state policies apply to municipal siting processes?

The siting of wireless infrastructure is governed by local, state and federal law. Most wireless infrastructure siting is governed by the applicable government entity with control over the facility's property or location, and there may also be state and/or federal laws that apply to local determination. Local governments assess applications for permits to build new or alter existing wireless facilities for a variety of purposes, including public safety, overall management of public property or rights-of-way, accessibility requirements, environmental issues, land use and community aesthetics. Local governments may charge wireless service providers or wireless facility providers for application processing, access to the rights-of-way, and/or ongoing fees for access to public property — such as municipal street lights or traffic lights — either pursuant to local codes, as part of a large master lease or license agreements with a provider, or on an application-by-application basis.

What are some of the risks to cities?

Often, wireless providers will want small cells deployed in dense urban areas to provide adequate capacity in high demand spots, and each provider will want its own facility installed to cover the same dense area. Thus, there may be several requests to locate such facilities in the same general areas, such that four polls in a row will have small cells from four different wireless companies. This can result in clusters of small cells that are visually unappealing and detract from the aesthetic of the community. Deployment and installation of small cell facilities can potentially interfere with existing technology, such as wireless traffic signals and other municipal technology in close proximity. There is also the risk of ground mounted equipment associated with some small cell facilities obstructing a crowded city's rights-of-way. In addition, recent state and federal efforts to speed the deployment of small cell facilities have focused on preempting local authority to review and control small cell deployments, or to collect fair rents for the use of public property.
Small Cell Wireless Technology in Cities

Federal oversight of wireless siting is primarily based on three federal laws: The Communications Act of 1934, the Telecommunications Act of 1996 (Telecommunications Act) and a provision of the Middle-Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).

These laws contain provisions intended to spur the development of wireless infrastructure and impose some limits on local authority over that infrastructure. The Telecommunications Act, for instance, makes it unlawful for local government to prohibit, or have the effect of prohibiting, the "provision of personal wireless service," prevents local government from "unreasonably discriminating among providers of functionally equivalent services," and requires that local government "act on any authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time." It also stipulates that local governments denying siting applications do so "in writing and supported by substantial evidence contained in a written record." The Federal Communications Commission (FCC) has interpreted that a "reasonable period of time" for local governments to grant or deny siting requests is 150 days for new facilities, and 90 days for collocations. This presumed time limitation is commonly known as a "shot clock."

Meanwhile, the Spectrum Act also contains provisions that limit local control over colocated wireless facilities to ensure the swift deployment of wireless technologies. Section 6409(a) of the Act provided that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." The FCC created regulations in support of this law, specifying that these collocation requests must be approved within 60 days of application, and that this definition includes distributed antenna system (DAS) and small cell facilities. If a city finds that it received an incomplete application, it has a limited period of time in which to pause, or "toll," the shot clock by notifying applicants in writing of the missing information and relevant local requirements.

The 1934 Communications Act has been cited in recent federal petitions and rulemaking activity relating to the deployment of small cell facilities. Section 253 of the 1934 Act requires that local governments receive "fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis," when determining costs to access the public rights-of-way. The FCC has solicited public comment on how and whether to clarify the meaning of this phrase in relation to small cell wireless facilities but has not yet issued a decision or guidance. Likewise, the FCC has recently issued orders prohibiting moratoria on wireless deployment applications and permitting in essentially all circumstances.

State governments have also passed laws intended to speed the deployment of wireless infrastructure, particularly small cell infrastructure, in recent years. For example, Arizona's HB 2365, which was signed into law on March 31, 2017, imposes a series of new requirements on cities' regulation of wireless infrastructure. Arizona's law creates timelines for both cities and applicants to complete reviews of applications and buildout of the requested site. Additionally, it states that rates
or fees are limited to not more than the actual and direct costs incurred by cities to review those applications or manage the ROW, and places a fixed dollar cap on those application fees, as well as a fixed cap on annual rights-of-way access and pole collocation fees.\textsuperscript{13,14,15}

Other states have enacted similar limits on local review times, factors which may be considered in a site review and fees local governments may assess. State laws may limit whether local governments can enter into agreements with providers for larger-scale deployments of infrastructure within a community.

\textbf{What are some of the policy challenges cities face?}
Cities adapting their ordinances or processes to enable efficient small cell deployment face a number of policy challenges. First, cities must consider any recent changes to state law that impact local ordinances. Nearly half of all states had already passed small cell legislation or were considering it by their 2018 legislative sessions. Many states that passed laws exempted municipal rights of way from the legislation. These laws may impact what fees or rates cities can assess, what factors they may consider when deciding whether to approve or deny a wireless facility application, and whether the city is subject to a stricter application review timeline than federal regulations establish.

Cities must also consider their own internal capacity when determining how much time should elapse before a new ordinance focused on small cell deployment goes into effect. For example, if the new process demands the establishment of new online application systems or forms, the city should allow ample time to create those new systems before applicants will expect access to them, to avoid unnecessary delays in the application process. Particularly in the case of small cell deployments, providers may wish to file many applications at once as part of a network build-out, and cities should be prepared to determine whether they can limit the number of applications any provider can file within a given time period under state law, or whether they are capable of accepting batches of similar applications simultaneously.

Cities should be cautious in passing moratoria on new wireless facility applications. While moratoria may provide the necessary time for policy makers to determine how best to approach this new technological and administrative challenge, they are not legal in some states, and have been prohibited by the FCC. Moratoria may invite legal challenges from wireless providers eager to start construction.
City Examples

Boston: Preserving History and Planning for a Technology-Driven Future

The city of Boston faced a unique challenge when it set out to upgrade the city’s wireless networks: its history. The city contains narrow, twisting streets with little sidewalk space, carefully-maintained historic districts, and a wide variety of decorative poles and streetlights — including some gas lamps. This adds up to crowded rights-of-way with sensitive aesthetic needs. However, a city known for its universities and tech industries needed to be a competitive leader on broadband infrastructure to retain and attract residents and businesses.

To address the growing demand for small cell wireless infrastructure, the city used widely-available online tools to create an online application and review process that has reduced the average turnaround time for small cell site application reviews to roughly two weeks. The city has also managed to stem potential floods in applications by placing reasonable obligations on providers eager to file many applications at once.

Macrocell technology is much better for large, low-density populations like quiet residential areas. Small cells are perfect for small, dense-population areas with high-capacity needs. Downtowns, stadiums and theme parks are ideal for this technology.
For instance, after a permit for a new wireless facility is approved, the provider must build its site within sixty days.

Because of its narrow, historic streets, Boston has had to work very closely with neighbors and wireless providers to create innovative pole designs that take up less sidewalk space, or to negotiate a different pole location on a nearby arterial street with fewer residences and more room to site equipment.

Lincoln: Creating Business Solutions to Technology Challenges

In the city of Lincoln, Nebraska, broadband infrastructure is an important development priority. As demand for service, and for permission to build infrastructure, rose in the community, the city decided to tackle business process challenges. The city began physically relocating staff and grouping them by process and function, rather than department, and created a new rights-of-way construction group of staff from multiple departments to manage broadband infrastructure, small cell wireless applications and other issues. This created a one-stop-shop for private utility construction in the public right-of-way.

The city worked with carriers to create a standard pole design that met the needs of 95 percent of the city’s pole locations and could accommodate most carriers’ equipment. For the other five percent of locations, the city has worked with individual carriers to co-design poles to meet those locations’ needs and added those new designs to a list of pre-approved poles. The city has also developed a database of existing right-of-way infrastructure assets, such as water, power and broadband lines in the city. This helps smooth the application process and cuts down on the time needed to communicate between city departments and with providers. Additionally, the city has created a master license agreement process based on existing public-private partnership agreements and adapted the master license agreements used for broadband to business and home to mobile infrastructure. Making the agreements consistent, and posting them publicly online, has helped reassure providers that they are getting the same deal as their competitors and smoothed the negotiating process.

Lincoln has faced some challenges in recent years with its efforts to deploy wireless infrastructure. Some providers have successfully received permits to build new poles, but have not deployed in those locations, resulting in wasted city resources and no improved service for residents. The city has also fought back against attempts by the state legislature to preempt local authority over small cells. In 2017, the city battled wireless providers who claimed that city-induced costs were inhibiting infrastructure deployment. When Lincoln offered a discount to local carriers who were willing to build out connectivity in rural parts of Nebraska, the providers backed down, and ultimately preemptive legislation did not pass that year.
Small Cell Wireless Technology in Cities

Raleigh: Finding Common Ground with Industry Through Partnerships
The city of Raleigh is focused on being the best — with hopes of being designated a ‘best place’ to live, work and play, as well as a forward-thinking leader in the technology space. The city recognized that in order to achieve those goals, it would need to be open to the prospect of small cell wireless infrastructure deployment. From the moment the city was approached about installing small cell infrastructure, the priority was to establish a good working relationship with wireless providers while protecting and upholding the values and interests of residents within our communities.

The city streamlined its application process by eliminating some unnecessary engineering time and costs. Rather than calling for engineering drawings for all installations, the city shifted its process to require basic geographic coordinates for proposed wireless sites, so that the city could quickly work with providers to find optimal locations. Wireless providers appreciated hearing back from city staff about site feasibility within a couple of days of submittal. The city has also taken several steps to hear the wishes of residents, most directly through its 20 Citizen Advisory Councils. City employees who manage small cell deployment have been meeting regularly with these advisory boards to gather feedback and answer questions about the process of small cell installation.

Quantity and Quality: Although macrocells cover much larger areas than small cells — miles versus feet — small cells have higher-quality coverage that works well in dense areas.
One administrative challenge came about in the form of a piece of legislation passed by the state that preempts the city’s ability to manage small cell applications. A 2017 law restricts local governments in the state of North Carolina from sending applications for collocated infrastructure — or infrastructure that wireless providers want to place on existing poles — to city council for review. Wireless providers that wish to collocate small cell infrastructure are allowed to seek administrative approval and place their equipment and infrastructure on those existing poles. This is intended to streamline the review process for small cell installations that do not require a new structure or pole to be constructed. While it shortens the administrative approval process, it removes the city’s ability to govern on this issue.

**San Jose: Welcoming New Technology While Closing the Digital Divide**

Equity drives San Jose’s approach to bringing new technologies to the city, and the deployment of municipal broadband and municipal fiber lines is no exception. Located in Silicon Valley, San Jose city officials are acutely aware of the technology boom happening on their doorstep and are eager to welcome these advances, provided they can do so in a way that speaks to the needs of all residents. With only three percent of the city connected to high quality fiber lines, the city needed to both improve overall access to high speed Internet and address the digital divide for 95,000 residents without access. After commissioning a study of the city’s broadband approach as well as conducting surveys of low-income populations, San Jose officials set about working with the private sector on an arrangement that facilitates deployment, speaks to the city's equity goals and meets provider expectations.

They settled on a tiered pricing structure where providers pay $750-$2500 depending on whether they will cover the entire city or smaller areas. Larger deployments essentially receive a bulk-discounted rate. This revenue then feeds into two important city goals: Internal capacity building and digital equity. For the former, the revenue bolsters the public works department, enabling staff to streamline the permitting and governance processes. Providers are therefore amenable to the deal because it facilitates faster small cell deployment. Additionally, the remaining funds, $24 million so far, go into a “Digital Inclusion Fund” to close the digital divide for low income and vulnerable populations.
Small Cell Wireless Technology in Cities

When San Jose officials stepped back to look at the whole picture, they noticed that different providers had an interest in deploying in different market segments and, therefore, different neighborhoods. By building relationships with these carriers, San Jose has been able to spread coverage across the city. Where gaps arise, the digital inclusion fund fills in. Some of the projects on deck include free device checkout at libraries and coding camps. The city will also pursue grants on top of these core funds to further build out program support in the long term.

Tempe: Bringing Transparency to the Process

The city of Tempe knows that small cell infrastructure will be integral to meeting the technological demands of the future. For city staff, determining the process for small cell infrastructure deployment and being transparent about it with wireless providers was very important. Once the city established a master license agreement with the first carrier in the market, that original agreement was used as a template to develop subsequent agreements with small cell infrastructure providers, who also wanted to deploy small cells and distributed antenna systems (DAS).

In 2017, however, preemptive legislation was passed by the Arizona state legislature that hindered the city’s ability to completely control small cell infrastructure deployment. The new law imposed fee caps as well as shot clocks on the application process. It also forced cities to reduce their fees to a rate that was significantly lower than existing market rate agreements. The rationalization for such legislation was that it was needed to speed up deployment in Arizona by limiting a city’s capacity to interfere via local legislation and incentivize 5G by reducing the industry’s costs of deployment. During the negotiation period preceding the passage of the bill, the city fought hard to maintain its ability to manage the right-of-way, mostly in order to retain control over the aesthetic elements of deployment and to minimize any visual blight caused by the size of the small cell allowed (the equivalent of 27 pizza boxes).

The new law required Arizona cities to establish and make standard terms of agreements publicly available. Tempe viewed the legislation’s six-month implementation period as an opportunity to foster collaboration between the public and private sectors. Before finalizing the standard terms and conditions, site license provisions, application processes for small cells and design criteria, the city sent draft copies of all proposed documents to the major carriers and infrastructure providers for feedback. Collaboration with the industry was important in avoiding conflict when documents advanced to the city council for deliberation and approval.

The city also carefully considered the desires and values of the public. For residents, aesthetics and the way the new
Small cell infrastructure blended into the community were very important. Tempe was able to coordinate with other local cities and wireless providers to create design guidelines, ensuring that new infrastructure would mesh with the local aesthetic. The city worked to ensure that the guidelines were not too much of a hindrance to deployment. Tempe found that balancing the concerns of industry with the city's ability to manage its poles and right-of-way is critical. Local government can function as the connection between the community and industry, ensuring that both parties' interests are represented and accounted for.

**Towers:** Macrocell infrastructure is hard to miss. Towers can reach up to 199 feet in height, and they're rarely shorter than 50 feet.

**Small cell:** Small cell antennas are typically only a few feet tall, roughly the size of a pizza box. They are also often accompanied by an equipment cabinet the size of a utility box or refrigerator.
Board of Trustees Agenda Memorandum

Meeting Date: 4/9/2019

TITLE: Tumbleweed Carbondale, LLC Retail Marijuana Store Renewal Application

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: Tumbleweed Carbondale’s Retail Marijuana Store Renewal Application

BACKGROUND: Tumbleweed Carbondale’s retail marijuana store license expires on April 11, 2019. They submitted their renewal application on January 23, 2019. Staff scheduled consideration of the renewal application on the February 26, 2019 Agenda. However, the application was continued to March 12, 2019 and then to April 9th due to pending litigation and negotiations.

Tumbleweed is in compliance with the Town’s marijuana regulations.

FINANCIAL: All fees have been paid.

RECOMMENDATION: Town staff recommends that the Board of Trustees make a motion to approve Tumbleweed Carbondale, LLC’s retail marijuana store renewal application.

Prepared By: Cathy Derby, Town Clerk

Jay Harrington, Town Manager
## Retail Marijuana Facility Renewal Application

**Town of Carbondale**  
511 Colorado Avenue  
Carbondale, CO 81623

**Annual Fee:** $2,000.00  
**Renewal License Fee:** $500.00  
**TOTAL DUE:** $2,500.00

<table>
<thead>
<tr>
<th>Applicant is renewing a:</th>
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<tbody>
<tr>
<td>☐ Store</td>
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<tr>
<td>☐ Cultivation</td>
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<tr>
<td>☐ Manufactured Infused Products (MIP)</td>
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<tr>
<td>☐ Lab</td>
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<tr>
<td>☐ Other (Please Specify)</td>
</tr>
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### Licensor Name: (ie. Corporation Name)
- Tumbleweed Carbondale, LLC

### Trade Name (DBA)
- Tumbleweed Carbondale

### Street Address:
- 304 Highway 133, Carbondale, CO 81623

### Business Phone:
- (970) 510-3065

### Mailing Address:
- 7931 S Broadway, Ste 155, Littleton, CO 80122

### Home Address:

### Phone:

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1. Do you have legal possession of the premises at the street address above?  
   - Yes ☑  
   - No ☐  
   - Is the premises owned or rented?  
     - Owned ☑  
     - Rented ☐  
   - If rented, expiration date of lease: 09/30/2026

2. Is the establishment within 500 ft. of a school?  
   - Yes ☑  
   - No ☐

3. Since the date of filing of the last annual application, has there been any change in the financial interest (loans, etc.) or organizational structure (change of officers, managing members, etc.)?  
   - Yes ☑  
   - No ☐  
   - If yes, explain in detail and provide documentation.

4. Since the date of the filing of the last annual application, has the applicant or any of its agents, owners, managers been convicted of a felony?  
   - Yes ☑  
   - No ☐  
   - If yes, attach a detailed explanation.

5. Since the date of the filing of the last annual application, has the applicant hired any new employees?  
   - Yes ☑  
   - No ☐  
   - If yes, have they been fingerprinted?  
     - Yes ☑  
     - No ☐  
   - Had a background check performed?  
     - Yes ☑  
     - No ☐

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### OATH OF APPLICANT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Town of Carbondale Municipal Code, which affects my license.

**Applicant Signature:** [Signature]  
**Date:** 01-16-2019  
**Title:** Owner

Has the local authority conducted a site visit to ensure that the premises is in compliance with Town Code?  
- Yes ☑  
- No ☐

**THIS APPLICATION HAS BEEN:**  
- ☑ Approved  
- ☐ Denied

**Authorized Signature:** [Signature]  
**Title:**  
**Date:**

**Attest:**  
**Title:**  
**Date:**
TOWN OF CARBONDALE
511 COLORADO AVENUE
CARBONDALE, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: 4/9/2019

TITLE: Public Hearing for P&C Express, LLC and Durango Alternatives, LLC New Medical Marijuana Cultivation Licenses

SUBMITTING DEPARTMENT: Manager

ATTACHMENTS: None

BACKGROUND: Staff is working with CMED to clarify who their local agent with 10% ownership is.

FINANCIAL: All fees have been paid.

RECOMMENDATION: Town staff recommends that the Board of Trustees make a motion to continue P&C Express, LLC and Durango Alternative's new medical marijuana cultivation applications to May 14, 2019.

Prepared By: Cathy Derby, Town Clerk

Jay Harrington, Town Manager

Phone 970.510-1205  Fax 970.963.9140
To: Town of Carbondale Trustees
From: Colin Laird
Date: April 4, 2019
Re: Third Street Center Update and Planning

Dear Carbondale Trustees,

Thank you for giving us time on your agenda for an update on our current work and plans for facility improvements.

I have included a summary “10 Things to Know About the Third Street Center” as an introduction to our update.

We look forward to meeting with you on April 9.

Sincerely,

Colin Laird
Director

Facility Manager: Mark Taylor

Third Street Center Board Members:
Jim Kenney (President / Treasurer)  Frank McSwain
Dick Hart  Erica Sparhawk (Town Representative)
Kathy Feinsinger  Andrea Stewart (Tenant Representative)
Garret Jammeron (Alpine Bank)
10 Things to know . . .

1. We are a **Community Center** that hosted over 3,000 meetings and events in 2018. We have four community rooms that can handle groups from 2 to 300 people.

2. We are an **organizational incubator** and home to 26 nonprofit organizations, 7 artists, and 2 small businesses that rent office space at affordable rates. Several organizations started here and grew into larger off-site spaces, including True Nature, Carbondale Arts, Ascendigo, Coventure have moved to expand into bigger spaces in Carbondale.

3. **Over 100 people** work at the Third Street Center. This number has increased from 40 when we opened in 2010. Third Street has two full-time staff.

4. We are **regional hub** for meetings and services. Community impact organizations based at Third Street Center offer direct services to individuals and families across the Roaring Fork and Colorado River Valleys - improving the lives of thousands of people.

5. Third Street Center tenants work on almost every important issue facing our region – climate change, senior services, food safety, youth mentoring, health insurance, energy efficiency and renewables, education, business development, and mental health – making Third Street Center a **place of creative exchange and a solution incubator** for the larger region.

6. We are a **self-supporting nonprofit organization**. Office leasing, space rental and individual contributions make our $500,000 annual budget possible. We receive **no funding** from the Town of Carbondale.
7. Third Street Center repurposed the old Carbondale Elementary School, an initiative resulting from the Town of Carbondale’s 2007 Economic Road Map Process. Third Street Capital Campaign raised $2M to help renovate the facility into a community center. An additional $2.5M in financing was secured from Alpine Bank due to Town support. The Center opened in June 2010.

8. 100% of our electrical energy needs come from on-site solar power. We generate more electricity than we need and put the extra clean electricity back on the grid. We are one of the most energy efficient buildings in the region, with many sustainable design features added when the building was upgraded to become Third Street Center. We are working on strategies to reduce our natural gas use and become a net zero building.

9. We have embarked on a second phase of improvements that were identified but not completed during the origination renovation. After nine years of operation, we also have some ideas for improving the facility to meet community needs. Recent renovations include upgrading restrooms and adding windows in the old gym. We are moving towards upgrades in our parking areas and increasing clean energy production.

10. Third Street Center is more than a building. We currently are the coordinator for the Carbondale Revolving Loan Fund and serve as the fiscal agent for a number of community efforts and start-up nonprofits including Roaring Fork Cycling and the Youth Water Leadership Project. We also organize and host trainings to strengthen nonprofits, help coordinate the regional Colorado Gives Day effort, and actively participate in regional discussions on affordable housing solutions.
TOWN OF CARBONDALE
PUBLIC WORKS
511 Colorado Avenue
Carbondale, CO 81623

Board of Trustees Agenda Memorandum

Meeting Date: April 9, 2019

TITLE: Award Contracts-Waste Hauling Services

SUBMITTING DEPARTMENT: Public Works

ATTACHMENTS: Agreements for Residential Curbside Trash and Recycling Collection, Trash and Recycling Collection at Town Facilities and Yard Waste Drop Site Collection

BACKGROUND
At the March 19, 2019, meeting, the Board voted to award the residential, yard waste and town facilities waste hauling contracts to Mountain Waste & Recycling and directed staff to prepare the contracts and bring them back for formal approval. Those contracts are attached.

DISCUSSION
At the March 19th meeting, staff discussed some minor changes that would be made to the sample contracts based on questions received from the haulers and answers provided by the Town during the RFP process. These included:

- Tying annual cost increases to the Western Region CPI-U with a minimum and maximum allowed range of 1.5% to 4%. This has been updated in the “Price Change” section of each contract.
- Incorporating a cure period for failure to collect all trash and recyclables.
- Incorporating a cure period for failure to maintain vehicles in a clean and sanitary condition.

The Board also requested that the representations made in the response to the RFP be incorporated into the contract. This was done by adding a “Whereas” clause in the recitals portion of the contract and also by referencing the response in specific areas in the body of the agreement.

It should be noted that after the March 19, 2019, meeting, Mountain Waste & Recycling was acquired by Waste Connections. Local staff from Mountain Waste & Recycling was forthcoming with this information last week when they came in and reviewed the implications of the ownership change. They assured the Town that there was no anticipated change to local staffing at Mountain Waste & Recycling and that the key
contacts listed in the proposal would still continue to provide service to the Town. Representatives of Mountain Waste & Recycling will be at the meeting to respond to any questions from the Board.

FISCAL ANALYSIS
N/A

RECOMMENDED ACTION
Staff recommends that Contract A, Contract B, and Contract C be awarded to Mountain Waste & Recycling. Staff also recommends that the Board adopt the percentage-based administrative fee of 17.5% related to Contract A. Recommended motion: I move to authorize the Mayor to execute the agreements with Mountain Waste & Recycling for Residential Curbside Trash and Recycling Collection, Trash and Recycling Collection at Town Facilities and Yard Waste Drop Site Collection.

Prepared by: Kevin Schorzman
Town Manager
AGREEMENT FOR RESIDENTIAL CURBSIDE TRASH AND RECYCLING COLLECTION

This AGREEMENT FOR RESIDENTIAL TRASH AND RECYCLABLES COLLECTION (“Agreement”) is made and entered into this ______th day of ________, April, 2019, by and between the TOWN OF CARBONDALE, a Colorado home rule municipal corporation (the “Town”) and MOUNTAIN ROLL-OFFS, INC./dba MOUNTAIN WASTE & RECYCLING (the “Contractor”), a Colorado corporation.

RECITALS

WHEREAS, the 2017 Town of Carbondale Environmental Bill of Rights established that all residents and visitors shall have the right to solid waste reduction and increased recycling efforts. The same year, the Town’s Climate and Energy Action Full Plan set a 2050 goal of zero waste and identified the need to provide waste diversion programs to all residents, businesses, and construction projects; and

WHEREAS, the Town Board of Trustees has identified the following three primary goals for the management of residential trash and recyclables: (1) decrease the amount of trash managed through landfill disposal; (2) reduce traffic impacts associated with trash collection vehicles; and (3) reduce wildlife interactions associated with trash set-outs; and

WHEREAS, on __________January 4, 2019, the Town published a Request for Proposals (RFP), which is attached hereto as Exhibit A and incorporated herein by reference, for trash removal and recycling services within Town limits; and

WHEREAS, on February 22, 2019, the Contractor provided a proposal in response to the RFP, which is attached hereto as Exhibit B and incorporated herein by reference, that outlines its proposed services and obligations for trash removal and recycling services within Town limits; and

WHEREAS, the Town intends to engage a qualified private solid waste hauling and/or waste management company to provide residential curbside trash and recyclables collection (“Collection Services”); and

WHEREAS, Contractor submitted a proposal to perform Collection Services within the Town and to perform such work as may be incidental thereto; and

WHEREAS, following a review of each proposal received by a team of Town staff and contractors, the Board of Trustees voted to award the contract to Contractor based on the proposal evaluation criteria outlined in the RFP and subject to the execution of a mutually acceptable agreement.

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

1. SCOPE OF AGREEMENT. This Agreement pertains to Collection Services for residential units within Town limits. Residential units are defined as single-family detached dwelling units and multiple-family attached dwelling units in complexes containing seven (7) or fewer dwelling units. Contractor's work under this Agreement shall consist of all the supervision, materials, equipment (other than containers provided by customers as further discussed in Section 5.b, below), labor, and other items necessary to collect and dispose of non-hazardous trash and commingled, single-stream recyclables from residential units in accordance with the provisions of this Agreement. This Agreement shall not be considered an exclusive franchise for services to the residents of the Town, and any residential customer may choose to negotiate with any other permitted collection service.

2. SCOPE OF WORK. Beginning on October 1, 2019 the (“Service Start-Up Date”) and continuing for the full term of this Agreement, the Contractor shall provide the following services to each customer that is identified in writing from time to time by the Town to the Contractor: regular collection of trash and single-stream recyclables, as more particularly described in Sections 3 and 4, below. Collection Activities shall occur at the curb or alley line depending on the customer’s property and current service location.

3. REGULAR CURBSIDE TRASH COLLECTION. The Contractor shall regularly collect all non-hazardous solid trash that excludes source-separated recyclables, source-separated organics, special wastes, and any materials banned from landfill disposal by local or state law in accordance with the following requirements:

   a. Trash collection shall be based on volume-based service levels. The Contractor shall provide three standard trash service levels and a “Super Saver” service, as defined on Exhibit BC, to residents of the Town with discrete, individual trash container service.

   b. Collection shall be provided weekly except for the Super Saver service, as more particularly described on Exhibit BC, which option may include collection less frequently provided that the Town’s wildlife requirements are met.

   c. Residents with shared, communal trash container service shall be provided with the container type and size determined by the property owner/manager and/or the Contractor.

   d. Trash container overflows shall not be collected without photographing the overflow, generating a customer notice of needed action, and charging appropriate, additional fees that are based on the volume-based pricing.

   e. All trash shall be disposed at a duly permitted landfill.

4. RECYCLABLE SERVICES. The Contractor shall provide regular collection of commingled, single-stream recyclables in accordance with the following requirements:
a. All customer service pricing regardless of individual or communal container usage shall be based on trash service levels but shall include a bundled fee for trash and recyclables collection. The Contractor shall not charge extra for recyclables collection or management and shall not reduce fees based on a customer’s decision not to recycle. Every customer will be required to pay for the minimum level of recycling service.

b. For residents with discrete, individual trash container service, the minimum recycling service shall be the “medium service level,” as defined on Exhibit BC, collected every other week.

c. At a minimum, the Contractor agrees to collect the recyclables listed in Table 4-1, below.

d. The Town reserves the right to require the Contractor to collect additional recyclables should its independent study indicate environmental and economic feasibility.

e. Recyclable container overflows shall not be collected without photographing and generating a customer notice of needed action.

f. Recyclables with 25% contamination or more by volume may be collected as trash or not collected, at the Contractor’s discretion, provided a tag explaining why the recyclables were not collected is attached to the container in an attempt to educate the customer notice of action needed is made on appropriate recyclable materials.

g. All recyclables shall be delivered to a permitted materials recovery facility.

Table 4 -1  MINIMUM LIST OF RECYCLABLES FOR RESIDENTIAL COLLECTION

<table>
<thead>
<tr>
<th>Corrugated cardboard</th>
<th>Phonebooks &amp; paperback books</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brown paper bags</td>
<td>Plastic containers #1 &amp; #2</td>
</tr>
<tr>
<td>Office paper</td>
<td>Aluminum</td>
</tr>
<tr>
<td>Newspaper</td>
<td>Steel/tin cans</td>
</tr>
<tr>
<td>Magazines</td>
<td>Glass bottles &amp; jars</td>
</tr>
<tr>
<td>Paperboard (cereal/beer boxes)</td>
<td></td>
</tr>
</tbody>
</table>

5. CONTAINERS.

a. Trash and recyclable containers may be provided by the customer or the Contractor. The Contractor shall provide non-wildlife trash and recycling containers upon customer request and wildlife containers upon both customer and Town request. Containers may include:

i. Recycling bins.

ii. Two-wheeled trash carts for residents with individual container service (may either be non-wildlife or wildlife-resistant).

iii. Two-wheeled recycling carts for residents with individual container service.

iv. Dumpsters for residents with communal service to be used for trash and recycling (may either be non-wildlife or wildlife-resistant).

b. Containers Provided by Customers. Before the Service Start-Up Date, the Contractor shall verify adequacy of any customer-provided containers for use in the volume-based system (customers with individual trash container service
only) for compliance with the Town’s wildlife regulations, as applicable, and for compatibility with Contractor equipment.

c. Contractor-Provided Containers.
   i. Containers provided by the Contractor shall:
      1. Comply with Chapter 7, Article 3 of the Town of Carbondale Municipal Code, as may be amended from time to time, including but not limited to the wildlife regulations as described below.
      2. Be owned and maintained by the Contractor over the contract term.
      3. Be kept clean and in good working condition.
   ii. Contractor-provided containers shall be replaced with a new or repaired container at no cost to the customer except in instances of gross negligence by the customer. The Town will be the final arbiter of gross negligence if there is a dispute between the customer and Contractor.
   iii. Labels. Containers shall be affixed with labels or stickers that provide the Contractor’s contact information. Recyclable containers shall describe excluded materials for all trash containers, and describe acceptable and unacceptable materials on all recyclable containers. The labels shall emphasize graphics over words. Any wording shall be provided in both English and Spanish. Labels with the same content shall be provided to customers who provide their own containers.
   iv. Delivery. Non-wildlife containers shall be delivered within two (2) business days of customer request after the Service Start-Up Date. Wildlife containers shall be delivered within five (5) business days of customer or Town request after the Service Start-Up Date. The Town recognizes that not all container sizes will be available and will work with the contractor to assess pending container needs over the Agreement term.
   v. Exchanges and Service Level Changes.
      1. The Contractor shall make initial container exchanges for a different container size at no extra cost during the first sixty (60) calendar days after the Service Start-Up Date (non-wildlife containers only). This no-cost exchange shall be limited to one per customer address.
      2. Default service level customers will not be eligible for a no-cost container exchange unless approved by the Town on a case-by-case basis.
      3. Container exchanges and service level changes that impact ongoing, regular curbside collection shall be completed by the Contractor, included in the Contractor’s monthly invoice, and assessed by the Town on customer utility bills.

d. Wildlife Protection Requirements. The Town will conduct compliance activities to ensure compliance with the wildlife protection requirements contained within Chapter 7, Article 3 of the Municipal Code, as may be amended from time to time. The Town will request that the Contractor provide a wildlife container (the size will be based on the customer’s trash service level at the time of non-compliance) to repeat offenders, as more particularly defined in Chapter 7, Article 3, with the cost of the wildlife container assessed on customer utility bills.
bills. The Town will engage in a reasonable effort to keep the Contractor apprised of pending wildlife container needs.

e. Customers who do not provide their own containers and do not select alternative service levels shall be provided a default level of service equal to weekly medium trash service level and medium recycling service, as defined on Exhibit B, collected every other week regardless of current service. Both shall be non-wildlife containers (unless otherwise directed by the Town).

f. Customers who provide their own containers but do not select alternative service levels shall be provided the same default level of service and the appropriate containers if the customer’s existing containers do not match the default service level.

6. HOURS AND DAYS OF OPERATION. Contractor shall perform trash and recycling collection services as proposed in Exhibit B and as may be modified by mutual agreement during the term of this contract. At a minimum, Contractor routes shall be established to limit collections in discrete areas of the Town to one day per week. Trash and recyclables shall be collected from each residence on the same day. All collections shall be conducted between 7 AM and 7 PM on the normal mid-week collection day(s), and 8 AM to 5 PM on Saturdays when approved in advance by the Town. No collections shall occur on Sundays or holidays. Holidays shall include the six (6) days when the Pitkin County Landfill is closed.

7. SPECIAL SERVICES. The contractor shall provide door-to-door services to any physically impaired customers at no additional cost. The Town will provide a list of applicable addresses to the Contractor and update it as necessary.

8. PERSONNEL. The contractor shall maintain adequate and proper staff whose expertise will assure efficient operation of the services herein specified. All vehicle drivers shall be:

   a. Licensed by the State of Colorado to operate commercial vehicles.
   b. Alert, careful, courteous, and competent.
   c. Appropriately trained in operations and safety measures.
   d. Provided with appropriate communication tools. Cell phones shall not be used in a moving vehicle.

9. TRUCKS AND EQUIPMENT. The contractor shall provide all vehicles and equipment needed for collection of all trash and recyclables and for transfer to a landfill or recyclables processing facility in an efficient and environmentally sensitive manner. The Contractor shall not assign any vehicle to the program where the performance of its component parts is likely to cause damage to other components, jeopardize public safety, or be contrary to Colorado vehicle codes. The Contractor agrees to perform all work outlined in such a manner as to meet all accepted standards for safe practices during operations and to safely maintain stored equipment, machines, and materials consequential or related to the work. The Contractor shall agree additionally to accept the sole responsibility for complying with all local, county, state, federal or other legal requirements, including, but not limited to safety and inspection regulations. Any vehicle leaks that originate during collection at customer sites or any transportation associated with collection shall be cleaned up as soon as possible but no later than forty-eight (48) hours.
after the occurrence. The Contractor will consider the use of alternative fuel vehicles during the Agreement term as fleet replacement occurs, diesel prices increase, and fueling stations in the Roaring Fork Valley become more accessible. A current evaluation of this option will be a necessary component of any fuel surcharge petition by the Contractor (see Section 14, below).

10. LITTER OR SPILLAGE. The Contractor shall not litter premises in the process of making collections, but the Contractor shall not be required to collect any trash or recyclables that have not been placed in approved carts or in a manner as provided in this Agreement. During hauling, all trash and recyclables shall be contained, tied, or enclosed so that leaking, spillage, or blowing of materials is minimized. In the event of any material leakage or spillage by the Contractor, the Contractor shall be required to clean up the litter caused by the leakage or spillage. Customer containers shall be left in an orderly fashion.

11. FEES. The Contractor is solely responsible for all costs, charges, fees, fines, taxes, and any other assessments associated with collection, management, and disposal of trash, recyclables, and any other materials collected pursuant to this Agreement.

12. HOMEOWNERS ASSOCIATIONS. There are several homeowner associations, planned urban developments, and neighborhood groups in the Town. Several of these groups are parties to existing solid waste collection contracts. These groups are required to become recipients of the Contractor’s services pursuant to this Agreement on or before the expiration date of any existing solid waste collection contract. The Town will notify the Contractor in writing before the Contractor is required to begin serving customers in such areas.

13. PROMOTION, OUTREACH, AND CUSTOMER SERVICE. The Contractor shall be responsible for all customer service functions with the exception of those functions expressly reserved to the Town as described in Section 16 (Customer Billing) and Section 18 (Transition Services).

a. Required service notifications. The Contractor shall:
   i. Provide every customer with an information packet or flyer on service level options at least five (5) days prior to the Service Start-Up Date June 1, 2019, and every twelve (12) months from the contract effective date or more frequently if service information changes. The contents of such packet or flyer shall be multi-color and user-friendly and should emphasize graphics over words. Any wording shall be in both English and Spanish. The Town reserves the right to suggest example language and to review and approve customer material before distribution. The packet or flyer shall include the following:
      1. Description of service options, non-wildlife and wildlife containers, collection frequency, and pricing for trash and recycling.
      2. A collection schedule calendar alternative collection dates for holidays.
      3. Directions for changing service levels and obtaining wildlife containers.
4. Listing of acceptable and unacceptable trash and recyclable materials.
5. Guidance for managing trash and recyclables that do not fit in containers.
   ii. Maintain an up-to-date Town page on the Contractor’s website with the information listed above in Section 13(a)(i)(1)-(5).
   iii. Maintain the container labels/stickers described in Section 5(c)(iii) on all contractor containers.
   iv. Utilize tags to provide notice of needed actions (e.g. to alert customers of overflowing trash, contaminated recyclables, late set-outs, blocked containers, or other unacceptable conditions).

b. Recycling Outreach Program. In addition to the service notifications described above, the Contractor shall implement a recycling outreach and promotion program to foster steadily increasing trash diversion and the generation of quality recyclables. Insert details after proposals received. Contractor’s program shall be as described in Exhibit B.

c. Service Center. The Contractor shall operate a customer service center that customers can call during normal business hours and leave messages after hours.

d. Complaints. The Contractor shall resolve all customer requests and complaints to the satisfaction of customers, and report resolutions to the Town.

14. PRICE CHANGE. The Contractor’s rate schedule shall be adjusted annually beginning on the first anniversary of the Service Start-Up Date and annually thereafter to reflect changes in the cost of operations. The adjustments shall be as measured by fluctuations in the Consumer Price Index 12-month Western Region CPI-U for November as published by the U.S. Department of Labor Bureau of Labor Statistics for the West Coast Region. Any percentage change in the Consumer Price Index shall equal the percent change in the Contractor’s rate schedule to a maximum of three percent (3%) per year. 12-month Western Region CPI-U for November shall equal the percent change in the Contractor’s rate schedule for the following year if it falls between 1.5% and 4%. In the event that the 12-month Western Region CPI-U for November is below 1.5%, 1.5% will be the maximum allowable percent change in the Contractor’s rate schedule. In the event that the 12-month Western Region CPI-U for November is above 4%, 4% will be the maximum allowable percent change in the Contractor’s rate schedule unless it is considered an “Uncontrollable Cost” as defined in Section 14(a).

   a. Uncontrollable Costs. Contractor may, in writing, petition the Town for a rate schedule adjustment to accommodate costs such as landfill or recyclables processing tip fee increases, fuel cost increases, changes in applicable regulations, or changes in government charges (collectively, “Uncontrollable Costs”). Any year in which the regional Consumer Price Index 12-month Western Region CPI-U for November exceeds seven percent (7%) may also be considered an Uncontrollable Cost. In addition to the written notice, Contractor shall provide the Town with any other information regarding such increase reasonably requested by Town before any such increase becomes effective; provided, however, the parties recognize that notice of some increases
in Uncontrollable Costs may be provided after the increase in such Uncontrollable Cost becomes effective. The Town reserves the right, as a condition of approval, to inspect Contractor records that demonstrate the need for an adjustment. The Town’s approval of any petition shall not be unreasonably withheld.

15. CUSTOMER BILLING. The Town will conduct customer billing and payment for regular residential curbside Collection Services. The Town reserves the right to establish a utility customer rate structure that is different from the rate structure it pays the Contractor, including charging an administrative fee.

16. CONTRACTOR INVOICING, DATA REQUIREMENTS, AND COMPENSATION.
   a. Monthly Invoices. No later than five (5) business days following the end of the calendar month, the Contractor shall submit to the Town monthly invoices for all collections completed during the previous calendar month in an electronic format acceptable to the Town and including, at a minimum, the following information:
      i. total number of customers in each service level category;
      ii. service level (trash, recycling, other) by residential address that highlights any changes from the previous month;
      iii. fees for services provided;
      iv. miscellaneous charges, fees and/or adjustments; and
      v. total amount due.
   b. Weekly Data Requirements. The Contractor shall submit all customer-related data in an electronic format that is acceptable to the Town no later than 4 PM every Friday except for holidays that fall on Fridays (in which case the data shall be submitted by 4 PM on the following Monday).
   c. Compensation. The Contractor shall be compensated on a monthly basis for its services with payment expected within thirty (30) days of invoicing. Any amount the Contractor owes the Town for any reason may be deducted from any monthly payment by the Town.
   d. Auditing Rights. The Town retains all rights to audit the Contractor’s accounting records as they pertain to this Agreement.

17. RECORDKEEPING AND REPORTING.
   a. Quarterly Service Report. No later than 10 business days following the end of each calendar quarter, Contractor shall provide a written quarterly service report ("Quarterly Service Report") to the Town that addresses the previous calendar quarter. The Quarterly Report shall include a service log and photographs, as applicable. Additionally, the Quarterly Report shall include the following:
      i. Customer complaints and resolutions by address.
      ii. Missed collections and resolutions by address.
      iii. Return collections due to late set-outs or blocked containers by address.
      iv. Addresses with overflow trash and recyclables.
v. Addresses with recyclables contamination of 25% or more.
vi. Addresses with abused containers (for subsequent verification by the Town).

vii. Any vehicle accidents or infractions.

viii. Weight of each material collected (scale data is preferred; however, volume to weight conversion and estimations of residential Town-only quantities will be acceptable with a methodology approved by the Town).

ix. What facility(ies) any Town trash, recyclables and organics were delivered to.

x. End-markets (i.e., buyers of materials from facilities that process Carbondale’s recyclables, if available and able to be disclosed to the contractor).

xi. Any other information that the Town may reasonably request from time to time.

b. Annual Resource Recovery Report. The Contractor shall provide an annual resource recovery report (“Annual Report”) to the Town by February 1 of each calendar year. The first Annual Report shall be submitted by February 1, 2021. Each Annual Report shall be drafted in a manner suitable for sharing with the public and shall, at a minimum, include the following:

i. Annual landfill diversion by weight with a comparison to each previous year in the contract term.

ii. Comparison of residential diversion rates to communities from Aspen to Parachute where the Contractor provides collection or where the information is readily available to the public.

iii. Annual trash audit results.

iv. Identification of opportunities for additional or revised recycling based on diverted quantity/quality and disposed quantity, markets and economic viability, including:
   1. Recommendations for adding recyclables to the minimum list (see Table 4-1) or other changes to that list.
   2. Recommendations for changes needed to reduce the allowable recyclable contamination levels below 25% in the future.

v. Any other information that the Town may reasonably request from time to time.

c. All reports shall be written and electronically submitted.

d. Annual Trash Audit. The Contractor shall conduct a yearly trash audit (“Audit”) to obtain useful information on the collection services and cost effectiveness. The first Audit shall be conducted no later than February 2020 to establish a baseline, and an Audit shall be repeated between September and October 2020 (in order to measure fall leaf debris). Audits shall be repeated once annually thereafter. The Contractor’s Annual Report shall include graphic results of Audit findings and recommendations for program changes. The Audit shall be conducted on trash generated from the residential customers with individual and shared containers who are served under this Agreement and shall cover the following:
i. Physical representative samples (each sample should be at least 200 pounds).

ii. Weight-based measurements of recyclables and organics that could have been diverted through existing programs.

iii. Hazardous materials or those prohibited from disposal by local, state, or federal law.

e. Recordkeeping. The Contractor shall maintain in its local office full and complete operations and Customer service records pertaining to services provided under this Agreement (the “Records”). The Records shall be maintained for a minimum of three (3) years. The Records shall at all reasonable times be open for inspection and copying for any reasonable purpose of the Town upon prior written notice to the Contractor.

18. TRANSITION SERVICES. During the period between the effective date of this Agreement and the Service Start-Up Date, the parties shall have the following responsibilities:

a. Town Responsibilities. The Town will:
   i. Develop and distribute a public notification for customer service selection, using the service level descriptions and pricing described on Exhibit B.
   ii. Conduct the service level selection process, including identification of:
      1. Selected service levels by address;
      2. Addresses with customer-provided containers; and
      3. Default customers.
   iii. Provide the Contractor with a database of its customers and corresponding start-up service levels which will represent the initial service area to be served under this Agreement. The Town will endeavor to provide the most accurate customer data as customer participation and available information will allow. The Contractor agrees that service levels that are accurate on the Service Start-Up Date may need to change after such date.
   iv. Host a website page(s) for trash and recyclables collection that is linked to the Contractor’s website.
   v. Coordinate and facilitate up to three (3) public informational meetings.

b. Contractor Responsibilities. The Contractor shall:
   i. Provide the Town with service level descriptions and pricing at least 15 days prior to the service selection period.
   ii. Determine whether customer-provided containers are acceptable to future service and conduct any needed remedies.
   iii. Deliver all non-wildlife containers and as many requested wildlife containers as possible prior to the Service Start-Up Date.
   iv. Remove old containers owned by the Contractor from Contractor’s existing customers.
   v. Participate in public meetings coordinated by the Town.
   vi. Provide any suggestions to the Town as part of the proposal for conducting service level selection and transition activities in an efficient and effective manner.
19. OPTIONAL DIRECT-TO-CUSTOMER COLLECTION SERVICES. The Contractor may choose to provide additional collection services directly to the customer, including but not limited to curbside organics collection (e.g. yard waste, brush, and food waste), bulky item collection, other source-separated material collections, and valet services. The Contractor will bill customers directly for any additional collection services.

20. EFFECTIVE DATE, TERM, COMMENCEMENT OF SERVICES, RIGHT FOR RENEGOTIATION. This Agreement shall be deemed effective upon the signature of both parties (“Commencement Date”). This Agreement shall continue in effect for a term of five (5) years from the Commencement Date unless terminated or renegotiated as provided herein. The parties shall have the option of renewing this Agreement for two (2) consecutive two (2)-year periods (“Renewal Period(s)”). If either party desires to renew this Agreement, said party shall provide written notice to the other within ninety (90) days of the date the Initial Term or Renewal Period, as applicable, ends pursuant to this Section 20.

21. NO INTERFERENCE. Any activities, actions, or services performed under this Agreement shall not materially interfere with Town operations.

22. CONTRACTOR PERFORMANCE REVIEW. A review of Contractor performance will be used by the Town to evaluate the Contractor’s performance in completing the services required by this Agreement. The Town will conduct a review prior to any contract renewal. The Town also reserves the right to conduct a full review of contractor performance at any time during the contract term.

23. FAILURE TO PERFORM. The Town expects high levels of customer and collection services. Improper and insufficient actions or omissions related to any service required by this Agreement will be discouraged, to the extent possible, through liquidated damages and through default for more serious lapses in service requirements. Contractor agrees that, as to the matters set forth in Section 24 below, damage to the Town and the public interests it protects are not susceptible to ready determination as to the dollar amount of such damage, and that the liquidated damage amounts that are set forth in Section 24 below are reasonable estimates as to the dollar amount of damage incurred in relation to each offending act or omission.

24. LIQUIDATED DAMAGES. Liquidated damages may be assessed for the actions and omissions set forth herein upon the following conditions:

a. The Town must timely provide Contractor written documentation which sets forth the location, date, time, duration and a detailed description of the specific nature of the violation.

b. Contractor shall have up to twenty-four (24) hours (excluding weekend days or holidays) or as otherwise noted below to resolve the violation to the reasonable satisfaction of the Town.

c. If after twenty-four (24) hours (excluding weekend days or holidays) the violation remains unresolved, the Town may assess liquidated damages and deduct said damages from the Contractor’s monthly invoice amount.
<table>
<thead>
<tr>
<th>PERFORMANCE STANDARD VIOLATION</th>
<th>LIQUIDATED DAMAGES</th>
<th>NUMBER OF OCCURRENCE TRIGGER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to distribute public notice at least 5 days prior to service start-up date</td>
<td>$250 per day</td>
<td>1</td>
</tr>
<tr>
<td>Failure to provide service level descriptions &amp; pricing 15 days prior to service level selection period</td>
<td>$500 per day per</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to provide 3 service levels plus super saver service to all individual trash container accounts</td>
<td>$500 per day per customer</td>
<td>1</td>
</tr>
<tr>
<td>Failure to provide minimum recycling service</td>
<td>$500 per day per customer request</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to collect all trash &amp; recyclables excluding Force Majeure &amp; materials improperly set out by customer (within 24 hours of notification)</td>
<td>$500 per customer incident</td>
<td>1</td>
</tr>
<tr>
<td>Collection of overflow trash without customer notice &amp; additional service fee</td>
<td>$500 per customer</td>
<td>3</td>
</tr>
<tr>
<td>Issue</td>
<td>Penalty Description</td>
<td>Penalty Amount</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Collection of overflow recyclables without customer notice</td>
<td>$500 per customer</td>
<td>3</td>
</tr>
<tr>
<td>Management of properly set out recyclables as trash</td>
<td>$3,000 per incident</td>
<td>1</td>
</tr>
<tr>
<td>Failure to collect materials spilled during collection</td>
<td>Two times cost of clean-up incurred by Town</td>
<td>3</td>
</tr>
<tr>
<td>Failure to clean-up vehicle leaks (within 48 hours of occurrence)</td>
<td>Two times cost of clean-up incurred by Town</td>
<td>2</td>
</tr>
<tr>
<td>Failure to deliver trash or recyclables to permitted landfill or materials recovery facility</td>
<td>$3,000 per incident</td>
<td>1</td>
</tr>
<tr>
<td>Failure to deliver initial containers prior to service start-up &amp; within 2 days of customer request after start-up (non-wildlife) or within 5 days (wildlife)</td>
<td>$250 per day per container</td>
<td>3</td>
</tr>
<tr>
<td>Failure to maintain containers in clean &amp; good working conditions (within 48 hours of observation by driver, customer or Town)</td>
<td>$100 per container</td>
<td>3</td>
</tr>
<tr>
<td>Failure to maintain vehicles that are clean, sanitary, covered &amp; in good working order (within 48 hours of notification or observation)</td>
<td>$250 per vehicle per occurrence</td>
<td>3</td>
</tr>
<tr>
<td>Violation</td>
<td>Penalty Description</td>
<td>Incidents</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>----------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Failure to cover vehicles that contain trash, recyclables, yard waste or other solid waste</td>
<td>$250 per vehicle per occurrence</td>
<td>3</td>
</tr>
<tr>
<td>Failure to appropriately license drivers</td>
<td>$1,000 per driver per day</td>
<td>1</td>
</tr>
<tr>
<td>Failure to provide every driver with safety training &amp; enforce the no cell phone rule</td>
<td>$1,000 per driver per day &amp; $500 per cell phone infraction</td>
<td>1</td>
</tr>
<tr>
<td>Collection before 67 AM or after 87 PM or on any day other than specified collection day without Town’s pre-approval</td>
<td>$250 per incident (each truck on each route shall be a separate incident)</td>
<td>3</td>
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<tr>
<td>Failure to provide required customer information</td>
<td>$500 per day</td>
<td>1</td>
</tr>
<tr>
<td>Failure to attend pre-service start-up public meetings</td>
<td>$3,000 per failure</td>
<td>1</td>
</tr>
<tr>
<td>Failure to resolve customer complaints (resolved or resolution scheduled within 48 hours)</td>
<td>$250 per complaint</td>
<td>8</td>
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<tr>
<td>Delay in providing monthly billing data</td>
<td>$500 per day</td>
<td>2</td>
</tr>
<tr>
<td>Delay in submitting reports</td>
<td>$250 per report</td>
<td>3</td>
</tr>
<tr>
<td>Misrepresentation in records or reporting</td>
<td>$5,000 per incident</td>
<td>1</td>
</tr>
</tbody>
</table>

Notwithstanding the liquidated damages set forth herein, the Town has the right to exercise any and all remedies it may have with respect to these and other violations of Town codes, laws, rules and regulations and breaches of this Agreement. Any schedule of liquidated
damages shall not affect the Town’s ability to terminate this Agreement for breach.

25. NON-APPROPRIATION. To comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado, if the Town fails to annually appropriate sufficient money to fund any financial obligations arising out of this Agreement, this Agreement will be considered to have been terminated by the Town.

26. TERMINATION.

a. In the event of a failure by Contractor to perform any material provision of this Agreement, the Town may give written notice of such breach to the Contractor along with at least thirty (30) days to correct such breach (the “Cure Period”), provided that, if such breach is of a nature that it cannot be cured within 30 days, then the time for cure shall be extended provided that Contractor promptly commences cure and diligently completes cure within a reasonable time. The Town may terminate this Agreement after such Cure Period if Contractor has not adequately corrected such breach in accordance with this Agreement (unless such breach and/or failure to cure is due to a Force Majeure event, in which case Contractor’s performance hereunder shall be suspended for the duration of such Force Majeure event and a reasonable period thereafter), and the Town so notifies Contractor in writing of such termination action. Except for such right during the initial term of this Agreement, neither party shall have any further obligation under this Agreement other than for claims for personal injuries or property damage as expressly provided in this Agreement and arising prior to such termination date.

b. In the event of a failure by Town to perform any material provision of this Agreement, the Contractor may give written notice of such breach to the Town along with at least thirty (30) days (the “Cure Period”) to correct such breach. Contractor may terminate this Agreement after such Cure Period if Town has not adequately corrected such breach in accordance with this Agreement and Contractor so notifies Town in writing of such termination action.

27. INDEPENDENT CONTRACTOR. Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of the Town. Any provisions in this Agreement that may appear to give the Town the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the Town as to end results of the work only. As an independent contractor, Contractor is not entitled to worker’s compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this Agreement.

28. INSURANCE. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All
coverage shall be continuously maintained to cover all liabilities, claims, demands, and other obligations assumed by the Contractor. In the case of any claims made on the policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The policies required below, except for the Worker’s Compensation insurance, shall include the Town as an additional insured.

a. Worker’s Compensation. Contractor shall provide Worker’s Compensation insurance in an amount sufficient to cover obligations imposed by the Worker’s Compensation Act of Colorado and any other applicable laws for any such employee engaged in the performance of work under this Agreement.

b. Comprehensive General Liability. Contractor shall provide Comprehensive General Liability insurance with the minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall be on an occurrence basis and shall contain a severability of interests provision and a waiver of subrogation in favor of both the parties.

c. Automobile Liability. Contractor shall provide Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence with respect to each of the Contractor’s owned, hired or non-owned vehicles assigned to or used in the performance of services. The policy shall be on an occurrence basis and shall contain a severability of interests provision and a waiver of subrogation in favor of both the parties.

29. INDEMNIFICATION. The Contractor agrees to indemnify, defend, and hold harmless the Town and its elected and appointed officers, employees, agents, and insurers from and against any and all claims and liabilities (including without limitation claims and liabilities related to bodily injury or property damage), directly or indirectly arising out of, resulting from or related to this Agreement. The Contractor’s agreement to indemnify the Town shall include the obligation to pay any attorneys’ fees or costs incurred by the Town in defense of any such claims. The obligations of Contractor under this section shall survive the expiration or termination of this Agreement.

30. NOTICE. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such party’s representative at the address of the party set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.
TOWN: Town of Carbondale
CONTRACTOR: Mountain Waste & Recycling  c/o Jay Harrington, Town Manager

511 Colorado Avenue
P.O. Box 999
Carbondale, CO 81623
jharrington@carbondaleco.net
mike.hinkley@mountainwaste.com

31. FORCE MAJEURE. “Force Majeure” means any act or event that prevents a party from performing its obligations in accordance with the Agreement where the act or event is beyond the reasonable control and not the result of the fault or the negligence of the affected party and such party is unable to overcome such act or event through the exercise of due diligence. Such acts and events, include but are not limited to, acts of God, fire, explosion, accident, flood, severe storms, earthquake, epidemic, war, riot, strikes, lockouts, rebellion, and restraints or injunctions, not resulting from a party’s breach of any terms and conditions of this Agreement or any other contractual commitment. In cases of inclement weather, the Contractor and the Town shall agree for what period of time and upon what conditions collection service shall be suspended and such suspension shall be considered a Force Majeure event.

32. COMPLIANCE WITH LAW. The work and services to be performed by the Contractor hereunder shall be done in compliance with all applicable federal, state, county, and Town laws, ordinances, rules, and regulations.

33. VENUE AND APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Garfield, State of Colorado.

34. GOVERNMENTAL IMMUNITY. No provision of this Agreement shall be construed as a waiver or abrogation of, or an intent to waive or abrogate, any of the monetary limitations or any other rights, immunities or protections afforded to either Party or their respective directors, officials, officers, agents, and employees, by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., as it may be amended from time to time.

35. NO WAIVER. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any of the other terms or obligations of this Agreement.

36. ASSIGNMENT. This Agreement shall be binding upon the parties hereto, their successors, or assigns. The Contractor shall not assign this Agreement, in whole or in part, or assign any rights to payment hereunder, without prior written consent of the Town, which
consent shall not be unreasonably withheld, delayed, or qualified, however, the Contractor may assign this Agreement, without consent, to an entity controlled by, or under common control of the Contractor.

37. DEFAULT ATTORNEY FEES. In the event that suit is brought regarding this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and related court costs.

38. ENTIRE AGREEMENT AND AMENDMENT. This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

39. AUTHORITY TO EXECUTE AGREEMENT. The signatory of the Contractor represents and warrants that he/she has been duly authorized by the Contractor to enter into this Agreement and has full power and authority to bind the Contractor to the terms and conditions of this Agreement.

40. IMMIGRATION COMPLIANCE. Contractor also agrees to be bound by the terms of Exhibit C as related to compliance with Colorado immigration laws, which addendum is incorporated by reference.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ACCEPTED by the TOWN:

TOWN OF CARBONDALE, COLORADO,  
a Colorado home rule municipal corporation

By: __________________________
   Dan Richardson, Mayor
   511 Colorado Avenue
   Carbondale, CO 81623

ATTEST:

Cathy Derby, Town Clerk

STATE OF COLORADO  )
       ) ss.
COUNTY OF GARFIELD  )

The foregoing instrument was acknowledged before me this ___ day of
__________________, 2019, by Dan Richardson, Mayor, Town of Carbondale and Cathy Derby,  
Town Clerk, Town of Carbondale.

   My commission expires ____________________.
   Witness my hand and official seal.

   __________________________
   Notary Public
ACCEPTED by the CONTRACTOR:

By: ________________________________
   ___ Mike Hinkley

STATE OF COLORADO )
   ) ss.
COUNTY OF )

The foregoing instrument was acknowledged before me this ___ day of __________, 2019, by ________________________________.

My commission expires ________________.
Witness my hand and official seal.

______________________________
Notary Public
EXHIBIT A
Request for Proposals
EXHIBIT B

Contractor’s Proposal

Addendum to Mountain Waste & Recycling Solid Waste Pick-up and Disposal Proposal dated February 20, 2019: Mountain Waste & Recycling has modified the original proposal by agreeing to provide non-wildlife 32-gallon trash containers for the Super Saver and Small trash service levels.
EXHIBIT C
Pricing and Service Level Addendum
Work by Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., et. seq., as amended, Contractor warrants, represents, acknowledges, and agrees that:

1. Contractor does not knowingly employ or contract with an illegal alien.

2. Contractor shall not knowingly employ or contract with an illegal alien to perform work or enter into a contract with a sub-contractor that fails to certify to Contractor that the sub-contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

3. Contractor has participated in or attempted to participate in the basic pilot employment confirmation program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, “Basic Pilot Program”) in order to confirm or attempt to confirm the employment eligibility of all employees who are newly hired for employment in the United States. If Contractor is not accepted into the Basic Pilot Program prior to entering into this Agreement, Contractor shall forthwith apply to participate in the Basic Pilot Program and shall submit to the Town written confirmation of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in the Basic Pilot Program, and shall confirm such application to the Town in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph 3 shall be null and void if the Basic Pilot Program is discontinued.

4. Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5. If Contractor obtains actual knowledge that a sub-contractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:

   (a) notify the sub-contractor and the Town within three (3) days of when Contractor has actual knowledge that the sub-contractor is employing or contracting with an illegal alien; and

   (b) terminate the subcontract with the sub-contractor if within three (3) days of receiving the notice required pursuant to this subparagraph the sub-contractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the sub-contractor if during such three (3) days the sub-contractor provides information to establish that the sub-contractor has not knowingly employed or contracted with an illegal alien.

6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.
7. If Contractor violates this Exhibit CD, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

By: _________________________________

Dated: _______________
AGREEMENT FOR TRASH AND RECYCLING COLLECTION AT TOWN FACILITIES

This AGREEMENT FOR TRASH AND RECYCLABLES COLLECTION AT TOWN FACILITIES ("Agreement") is made and entered into this ___9th day of __________, April, 2019, by and between the TOWN OF CARBONDALE, a Colorado home rule municipal corporation (the "Town") and MOUNTAIN ROLL-OFFS, INC. /dba MOUNTAIN WASTE & RECYCLING (the "Contractor"), a Colorado corporation.

RECITALS

WHEREAS, the 2017 Town of Carbondale Environmental Bill of Rights established that all residents and visitors shall have the right to solid waste reduction and increased recycling efforts. The same year, the Town’s Climate and Energy Action Full Plan set a 2050 goal of zero waste and identified the need to provide waste diversion programs to all residents, businesses, and construction projects; and

WHEREAS, the Town Board of Trustees has identified the following three primary goals for the management of residential trash and recyclables: (1) decrease the amount of trash managed through landfill disposal; (2) reduce traffic impacts associated with trash collection vehicles; and (3) reduce wildlife interactions associated with trash set-outs; and

WHEREAS, on January 4, 2019, the Town published a Request for Proposals (RFP), which is attached hereto as Exhibit A and incorporated herein by reference, for, among other services, the collection of trash and recyclables generated at the following Town facilities: Town Hall, the Public Works Facility, and the Wastewater Treatment Plant (the “Town Facilities”); and

WHEREAS, the Town intends to engage a qualified private solid waste hauling and/or waste management company to collect trash and recyclables at the Town Facilities (“Town Facilities Collection Services”); and

WHEREAS, on February 22, 2019, the Contractor submitted a proposal in response to perform the RFP, which is attached hereto as Exhibit B and incorporated herein by reference, that outlines its proposed services and obligations for the Town Facilities Collection Services and to perform such work as may be incidental thereto, and;

WHEREAS, following a review of each proposal received by a team of Town staff and contractors, the Board of Trustees voted to award the contract to Contractor based on the proposal evaluation criteria outlined in the RFP and subject to the execution of a mutually acceptable agreement.

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

1
AGREEMENT

1. SCOPE OF AGREEMENT. This Agreement pertains to collection of trash and recyclables at the Town Facilities. Contractor’s work under this Agreement shall consist of all the supervision, materials, equipment, labor, and other items necessary to collect and dispose of non-hazardous trash and recyclables from Town Facilities in accordance with the provisions of this Agreement.

2. SCOPE OF WORK. Beginning on May 1, 2019 (the “Service Start-Up Date”) and continuing for the full term of this Agreement, the Contractor shall provide regular collection of trash and recyclables from the Town Facilities as more specifically described herein.

3. TRASH AND RECYCLING SERVICES. Contractor shall regularly provide trash, recycling, and cardboard collection at the Town Facilities as proposed in Exhibit B and as may be modified by mutual agreement during the term of this contract. At a minimum, Contractor shall provide collection at Town Facilities in accordance with the following requirements:

   a. Schedule. Contractor shall collect trash, recyclables, and cardboard according to the following schedule:

      i. Town Hall.

         1. A single two (2)- cubic yard cardboard container collected once per week.
         2. A single two (2)- cubic yard single-stream recyclables container collected once per week.
         3. A single six (6)- cubic yard trash container collected once per week.

      ii. Public Works Facility.

         1. A single eight (8)- cubic yard cardboard container collected daily Monday through Friday.
         2. A single three (3)- cubic yard single-stream recyclables container collected once per week.
         3. Two (2) eight (8)- cubic yard trash containers collected twice per week.

      iii. Waste Water Treatment Plant.

         1. Two (2) two (2)- cubic yard trash containers collected twice per week.
         2. A single twenty (20)- cubic yard roll-off container for trash (including branches, waste, leaves, grass clippings, and other non-organic materials) collected on an as-needed basis.
b. Trash Collection. All trash shall be disposed at a duly permitted landfill.

c. Recyclable Services. The Contractor shall provide regular collection of commingled, single-stream recyclables in accordance with the following requirements:

   i. At a minimum, the Contractor agrees to collect the recyclables listed in Table 3-1, below.
   ii. The Town reserves the right to require the Contractor to collect additional recyclables should its independent study indicate environmental and economic feasibility.
   iii. All recyclables shall be delivered to a permitted materials recovery facility.

| Table 3-1 MINIMUM LIST OF SINGLE-STREAM RECYCLABLES FOR TOWN FACILITIES COLLECTION |
|----------------------------------------|---------------------------------|
| Corrugated cardboard                  | Phonebooks & paperback books   |
| Brown paper bags                      | Plastic containers #1 & #2      |
| Office paper                          | Aluminum                        |
| Newspaper                             | Steel/tin cans                  |
| Magazines                             | Glass bottles & jars            |
| Paperboard (cereal/beer boxes)        |                                 |

4. PERSONNEL. The Contractor shall maintain adequate and proper staff whose expertise will assure efficient operation of the services herein specified. All vehicle drivers shall be:

   a. Licensed by the State of Colorado to operate commercial vehicles.
   b. Alert, careful, courteous, and competent.
   c. Appropriately trained in operations and safety measures.
   d. Provided with appropriate communication tools. Cell phones shall not be used in a moving vehicle.

5. TRUCKS AND EQUIPMENT. The Contractor shall provide all vehicles and equipment needed for collection of all trash and recyclables and for transfer to a landfill or recyclables processing facility in an efficient and environmentally sensitive manner. The Contractor shall not assign any vehicle to the program where the performance of its component parts is likely to cause damage to other components, jeopardize public safety, or be contrary to Colorado vehicle codes. The Contractor agrees to perform all work outlined in such a manner as to meet all accepted standards for safe practices during operations and to safely maintain stored equipment, machines, and materials consequential or related to the work. The Contractor shall agree additionally to accept the sole responsibility for complying with all local, county, state, federal or other legal requirements, including but not limited to safety and inspection regulations. Any vehicle leaks that originate during collection at Town Facilities or any transportation associated with collection shall be cleaned up as soon as possible but no later than forty-eight (48) hours after the occurrence. The Contractor will consider the use of alternative fuel vehicles during the
Agreement term as fleet replacement occurs, diesel prices increase, and fueling stations in the Roaring Fork Valley become more accessible. A current evaluation of this option will be a necessary component of any fuel surcharge petition by the Contractor (see Section 8.a, below).

6. LITTER OR SPILLAGE. The Contractor shall not litter any premises in the process of making collections. During hauling, all trash and recyclables shall be contained, tied, or enclosed so that leaking, spillage, or blowing of materials is minimized. In the event of any material leakage or spillage by the Contractor, the Contractor shall be required to clean up the litter caused by the leakage or spillage. The containers at the Town Facilities shall be left in an orderly fashion.

7. FEES. The Contractor is solely responsible for all costs, charges, fees, fines, taxes, and any other assessments associated with collection, management, and disposal of trash, recyclables, and any other materials collected pursuant to this Agreement.

8. PRICE CHANGE. The Contractor’s rate schedule shall be adjusted annually beginning on the first anniversary of the Service Start-Up Date and annually thereafter to reflect changes in the cost of operations. The adjustments shall be as measured by fluctuations in the Consumer Price Index 12-month Western Region CPI-U for November as published by the U.S. Department of Labor Bureau of Labor Statistics for the West Coast Region. Any percentage change in the Consumer Price Index 12-month Western Region CPI-U for November shall equal the percent change in the Contractor’s rate schedule to the following year if it falls between 1.5% and 4%. In the event that the 12-month Western Region CPI-U for November is below 1.5%, 1.5% will be the maximum allowable percent change in the Contractor’s rate schedule. In the event that the 12-month Western Region CPI-U for November is above 4%, 4% will be the maximum allowable percent change in the Contractor’s rate schedule unless it is considered an “Uncontrollable Cost” as defined in Section 8(a).

a. Uncontrollable Costs. Contractor may, in writing, petition the Town for a rate schedule adjustment to accommodate costs such as landfill or recyclables processing tip fee increases, fuel cost increases, changes in applicable regulations, or changes in government charges (collectively, “Uncontrollable Costs”). Any year in which the regional Consumer Price Index 12-month Western Region CPI-U for November exceeds seven percent (7%) may also be considered an Uncontrollable Cost. In addition to the written notice, Contractor shall provide the Town with any other information regarding such increase reasonably requested by Town before any such increase becomes effective; provided, however, the parties recognize that notice of some increases in Uncontrollable Costs may be provided after the increase in such Uncontrollable Cost becomes effective. The Town reserves the right, as a condition of approval, to inspect Contractor records that demonstrate the need for an adjustment. The Town’s approval of any petition shall not be unreasonably withheld.

9. CONTRACTOR INVOICING AND COMPENSATION.
a. Monthly Invoices. No later than five (5) business days following the end of the calendar month, the Contractor shall submit to the Town monthly invoices for Town Facilities Collection services rendered during the previous calendar month in an electronic format acceptable to the Town.

b. Any amount the Contractor owes the Town for any reason may be deducted from any monthly payment by the Town.

c. Auditing Rights. The Town retains all rights to audit the Contractor’s accounting records as they pertain to this Agreement.

10. RECORDKEEPING AND REPORTING.

a. Annual Report. The Contractor shall provide an annual resource recovery report (“Annual Report”) to the Town by February 1 of each calendar year. The first Annual Report shall be submitted electronically by February 1, 2021. Each Annual Report shall, at a minimum, include a monthly and total annual breakdown of the following information:

i. Any vehicle accidents or infractions.

ii. Weight of each material collected (scale data is preferred; however, volume to weight conversion and estimations of Town-only quantities will be acceptable with a methodology approved by the Town).

iii. What facility(ies) any Town trash, recyclables and organics were delivered to.

iv. End-markets (i.e., buyers of materials from facilities that process Carbondale’s recyclables).

v. Any other information that the Town may reasonably request from time to time.

b. All reports shall be written and electronically submitted.

c. Recordkeeping. The Contractor shall maintain in its local office full and complete operations and service records pertaining to services provided under this Agreement (the “Records”). The Records shall be maintained for a minimum of three (3) years. The Records shall at all reasonable times be open for inspection and copying for any reasonable purpose of the Town upon prior written notice to the Contractor.

11. EFFECTIVE DATE, TERM, COMMENCEMENT OF SERVICES, RIGHT FOR RENEGOTIATION. This Agreement shall be deemed effective upon the signature of both parties (“Commencement Date”). This Agreement shall continue in effect for a term of three (3) years from the Commencement Date unless terminated or renegotiated as provided herein. The parties shall have the option of renewing this Agreement for two (2) consecutive two (2)-year periods (“Renewal Period(s)”). If either party desires to renew this Agreement, said party shall provide written notice to the other within ninety (90) days of the date the Initial Term or Renewal Period, as applicable, ends pursuant to this Section 11.

12. NO INTERFERENCE. Any activities, actions, or services performed under this Agreement shall not materially interfere with Town operations.
13. CONTRACTOR PERFORMANCE REVIEW. A review of Contractor performance will be used by the Town to evaluate the Contractor’s performance in completing the services required by this Agreement. The Town will conduct a review prior to any contract renewal. The Town also reserves the right to conduct a full review of contractor performance at any time during the contract term.

14. FAILURE TO PERFORM. The Town expects high levels of collection services. Improper and insufficient actions or omissions related to any service required by this Agreement will be discouraged, to the extent possible, through liquidated damages and through default for more serious lapses in service requirements. Contractor agrees that, as to the matters set forth in Section 15 below, damage to the Town and the public interests it protects are not susceptible to ready determination as to the dollar amount of such damage, and that the liquidated damage amounts that are set forth in Section 15 below are reasonable estimates as to the dollar amount of damage incurred in relation to each offending act or omission.

15. LIQUIDATED DAMAGES. Liquidated damages may be assessed for the actions and omissions set forth herein upon the following conditions:

   a. The Town must timely provide Contractor written documentation which sets forth the location, date, time, duration and a detailed description of the specific nature of the violation.
   b. Contractor shall have up to twenty-four (24) hours (excluding weekend days or holidays) or as otherwise noted below to resolve the violation to the reasonable satisfaction of the Town.
   c. If after twenty-four (24) hours (excluding weekend days or holidays) the violation remains unresolved, the Town may assess liquidated damages and deduct said damages from the Contractor’s monthly invoice amount.

PERFORMANCE STANDARDS & LIQUIDATED DAMAGES

<table>
<thead>
<tr>
<th>PERFORMANCE STANDARD VIOLATION</th>
<th>LIQUIDATED DAMAGES</th>
<th>NUMBER OF OCCURRENCE TRIGGER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to collect materials spilled during collection</td>
<td>Two times cost of clean-up incurred by Town</td>
<td>3</td>
</tr>
<tr>
<td>Failure to clean-up vehicle leaks (within 48 hours of occurrence)</td>
<td>Two times cost of clean-up incurred by Town</td>
<td>2</td>
</tr>
<tr>
<td>Failure to deliver trash or recyclables to permitted landfill or materials recovery facility – or yard waste to Pitkin County compost facility</td>
<td>$3,000 per incident</td>
<td>1</td>
</tr>
<tr>
<td>Failure to maintain containers in clean &amp; good working conditions (within 48 hours of observation by driver or Town)</td>
<td>$100 per container</td>
<td>3</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-------------------</td>
<td>---</td>
</tr>
<tr>
<td>Failure to maintain vehicles that are clean, sanitary, covered &amp; in good working order (within 48 hours of notification or observation)</td>
<td>$250 per vehicle per occurrence</td>
<td>3</td>
</tr>
<tr>
<td>Failure to cover vehicles that contain trash, recyclables, yard waste or other solid waste</td>
<td>$250 per vehicle per occurrence</td>
<td>3</td>
</tr>
<tr>
<td>Failure to appropriately license drivers</td>
<td>$1,000 per driver per day</td>
<td>1</td>
</tr>
<tr>
<td>Failure to provide every driver with safety training &amp; enforce the no cell phone rule</td>
<td>$1,000 per driver per day &amp; $500 per cell phone infraction</td>
<td>1</td>
</tr>
<tr>
<td>Failure to resolve customer complaints (resolved or resolution scheduled within 48 hours)</td>
<td>$250 per complaint</td>
<td>8</td>
</tr>
<tr>
<td>Delay in providing monthly billing data</td>
<td>$500 per day</td>
<td>2</td>
</tr>
<tr>
<td>Delay in submitting reports</td>
<td>$250 per day per report</td>
<td>3</td>
</tr>
<tr>
<td>Misrepresentation in records or reporting</td>
<td>$5,000 per incident</td>
<td>1</td>
</tr>
</tbody>
</table>

Notwithstanding the liquidated damages set forth herein, the Town has the right to exercise any and all remedies it may have with respect to these and other violations of Town codes, laws, rules and regulations and breaches of this Agreement. Any schedule of liquidated damages shall not affect the Town’s ability to terminate this Agreement for breach.

16. NON-APPROPRIATION. To comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado, if the Town fails to annually appropriate sufficient money to fund any financial obligations arising out of this Agreement, this Agreement will be considered to have been terminated by the Town.

17. TERMINATION.

a. In the event of a failure by Contractor to perform any material provision of this Agreement, the Town may give written notice of such breach to the Contractor along with at least thirty (30) days to correct such breach (the “Cure Period”), provided that, if such breach is of a nature that it cannot be cured within 30 days, then the time for cure shall be extended provided that Contractor promptly
commences cure and diligently completes cure within a reasonable time. The Town may terminate this Agreement after such Cure Period if Contractor has not adequately corrected such breach in accordance with this Agreement (unless such breach and/or failure to cure is due to a Force Majeure event, in which case Contractor’s performance hereunder shall be suspended for the duration of such Force Majeure event and a reasonable period thereafter), and the Town so notifies Contractor in writing of such termination action. Except for such right during the initial term of this Agreement, neither party shall have any further obligation under this Agreement other than for claims for personal injuries or property damage as expressly provided in this Agreement and arising prior to such termination date.

b. In the event of a failure by Town to perform any material provision of this Agreement, the Contractor may give written notice of such breach to the Town along with at least thirty (30) days (the “Cure Period”) to correct such breach. Contractor may terminate this Agreement after such Cure Period if Town has not adequately corrected such breach in accordance with this Agreement and Contractor so notifies the Town in writing of such termination action.

18. INDEPENDENT CONTRACTOR. Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of the Town. Any provisions in this Agreement that may appear to give the Town the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the Town as to end results of the work only. As an independent contractor, Contractor is not entitled to worker’s compensation benefits except as may be provided by the independent contractor or to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this Agreement.

19. INSURANCE. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained to cover all liabilities, claims, demands, and other obligations assumed by the Contractor. In the case of any claims-made on the policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The policies required below, except for the Worker’s Compensation insurance, shall include the Town as an additional insured.

a. Worker’s Compensation. Contractor shall provide Worker’s Compensation insurance in an amount sufficient to cover obligations imposed by the Worker’s Compensation Act of Colorado and any other applicable laws for any such employee engaged in the performance of work under this Agreement.

b. Comprehensive General Liability. Contractor shall provide Comprehensive General Liability insurance with the minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) and TWO MILLION DOLLARS
($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall be on an occurrence basis and shall contain a severability of interests provision and a waiver of subrogation in favor of both the parties.

c. Automobile Liability. Contractor shall provide Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence with respect to each of the Contractor’s owned, hired or non-owned vehicles assigned to or used in the performance of services. The policy shall be on an occurrence basis and shall contain a severability of interests provision and a waiver of subrogation in favor of both the parties.

20. INDEMNIFICATION. The Contractor agrees to indemnify, defend, and hold harmless the Town and its elected and appointed officers, employees, agents, and insurers from and against any and all claims and liabilities (including without limitation claims and liabilities related to bodily injury or property damage), directly or indirectly arising out of, resulting from or related to this Agreement. The Contractor’s agreement to indemnify the Town shall include the obligation to pay any attorneys’ fees or costs incurred by the Town in defense of any such claims. The obligations of Contractor under this section shall survive the expiration or termination of this Agreement.

21. NOTICE. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such party’s representative at the address of the party set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

TOWN: CONTRACTOR:
Town of Carbondale c/o Jay Harrington, Town Manager
Mountain Waste & Recycling

c/o Mike Hinkley, District Mgr. 511 Colorado Avenue
P.O. Box 999
Carbondale, CO 81623
Carbondale, CO 81623
jharrington@carbondaleco.net mike.hinkley@mountainwaste.com

22. FORCE MAJEURE. “Force Majeure” means any act or event that prevents a party from performing its obligations in accordance with the Agreement where the act or event is
beyond the reasonable control and not the result of the fault or the negligence of the affected party and such party is unable to overcome such act or event through the exercise of due diligence. Such acts and events, include but are not limited to, acts of God, fire, explosion, accident, flood, severe storms, earthquake, epidemic, war, riot, strikes, lockouts, rebellion, and restraints or injunctions, not resulting from a party’s breach of any terms and conditions of this Agreement or any other contractual commitment. In cases of inclement weather, the Contractor and the Town shall agree for what period of time and upon what conditions collection service shall be suspended and such suspension shall be considered a Force Majeure event.

23. COMPLIANCE WITH LAW. The work and services to be performed by the Contractor hereunder shall be done in compliance with all applicable federal, state, county, and Town laws, ordinances, rules, and regulations.

24. VENUE AND APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Garfield, State of Colorado.

25. GOVERNMENTAL IMMUNITY. No provision of this Agreement shall be construed as a waiver or abrogation of, or an intent to waive or abrogate, any of the monetary limitations or any other rights, immunities or protections afforded to either Party or their respective directors, officials, officers, agents, and employees, by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., as it may be amended from time to time.

26. NO WAIVER. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any of the other terms or obligations of this Agreement.

27. ASSIGNMENT. This Agreement shall be binding upon the parties hereto, their successors, or assigns. The Contractor shall not assign this Agreement, in whole or in part, or assign any rights to payment hereunder, without prior written consent of the Town, which consent shall not be unreasonably withheld, delayed, or qualified, however, the Contractor may assign this Agreement, without consent, to an entity controlled by, or under common control of the Contractor.

28. DEFAULT ATTORNEY FEES. In the event that suit is brought regarding this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and related court costs.

29. ENTIRE AGREEMENT AND AMENDMENT. This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.

30. AUTHORITY TO EXECUTE AGREEMENT. The signatory of the Contractor represents and warrants that he/she has been duly authorized by the Contractor to enter into
this Agreement and has full power and authority to bind the Contractor to the terms and conditions of this Agreement.

34—IMMIGRATION COMPLIANCE. Contractor also agrees to be bound by the terms of Exhibit BC as related to compliance with Colorado immigration laws, which addendum is incorporated by reference.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ACCEPTED by the TOWN:

TOWN OF CARBONDALE, COLORADO,
a Colorado home rule municipal corporation

By: ________________________________________
Dan Richardson, Mayor
511 Colorado Avenue
Carbondale, CO 81623

ATTEST:

Cathy Derby, Town Clerk

STATE OF COLORADO )
) ss.
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this ___ day of
________________, 2019, by Dan Richardson, Mayor, Town of Carbondale and Cathy Derby,
Town Clerk, Town of Carbondale.

My commission expires ________________.
Witness my hand and official seal.

______________________________________
Notary Public
ACCEPTED by the CONTRACTOR:

By: ______________________________

__

Mike Hinkley

STATE OF COLORADO   )
COUNTY OF           ) ss.

The foregoing instrument was acknowledged before me this ___ day of
_____________, 2019, by ________________________________.

My commission expires _____________.
Witness my hand and official seal.

______________________________

Notary Public
EXHIBIT A

Request for Proposals
EXHIBIT B

Contractor’s Proposal
EXHIBIT C

Work by Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., et. seq., as amended, Contractor warrants, represents, acknowledges, and agrees that:

1. Contractor does not knowingly employ or contract with an illegal alien.

2. Contractor shall not knowingly employ or contract with an illegal alien to perform work or enter into a contract with a sub-contractor that fails to certify to Contractor that the sub-contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

3. Contractor has participated in or attempted to participate in the basic pilot employment confirmation program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, “Basic Pilot Program”) in order to confirm or attempt to confirm the employment eligibility of all employees who are newly hired for employment in the United States. If Contractor is not accepted into the Basic Pilot Program prior to entering into this Agreement, Contractor shall forthwith apply to participate in the Basic Pilot Program and shall submit to the Town written confirmation of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in the Basic Pilot Program, and shall confirm such application to the Town in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph 3 shall be null and void if the Basic Pilot Program is discontinued.

4. Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5. If Contractor obtains actual knowledge that a sub-contractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:
   
   (a) notify the sub-contractor and the Town within three (3) days of when Contractor has actual knowledge that the sub-contractor is employing or contracting with an illegal alien; and

   (b) terminate the subcontract with the sub-contractor if within three (3) days of receiving the notice required pursuant to this subparagraph the sub-contractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the sub-contractor if during such three (3) days the sub-contractor provides information to establish that the sub-contractor has not knowingly employed or contracted with an illegal alien.

6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.
7. If Contractor violates this Exhibit B, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

By: _________________________________

Dated: ______________
AGREEMENT FOR YARD WASTE DROP SITE COLLECTION

This AGREEMENT FOR THE COLLECTION OF YARD WASTE AT A DROP SITE LOCATION ("Agreement") is made and entered into this ___9th day of ________April, 2019, by and between the TOWN OF CARBONDALE, a Colorado home rule municipal corporation (the “Town”) and __________________________MOUNTAIN ROLL-OFFS, INC. /dba MOUNTAIN WASTE & RECYCLING (the “Contractor”), a ___________Colorado corporation.

RECITALS

WHEREAS, the 2017 Town of Carbondale Environmental Bill of Rights established that all residents and visitors shall have the right to solid waste reduction and increased recycling efforts. The same year, the Town’s Climate and Energy Action Full Plan set a 2050 goal of zero waste and identified the need to provide waste diversion programs to all residents, businesses, and construction projects; and

WHEREAS, yard and food waste constitute a sizable portion, up to 30 percent by weight according to recent data, of Pitkin County’s landfill waste; and

WHEREAS, the Board of Trustees understand that a relatively small percentage of Town residents currently subscribe to curbside organics collection, and the Town has received many requests for a less expensive collection option for yard waste; and

WHEREAS, on January 4, 2019, the Town published a Request for Proposals (RFP), which is attached hereto as Exhibit A and incorporated herein by reference, for trash removal and recycling services within Town limits, including the seasonal provision of a centralized drop site to which Town residents and businesses may self-haul their yard waste; and

WHEREAS, the Town intends to engage a qualified private solid waste hauling and/or waste management company to provide seasonal yard-waste collection services at a drop site (“Yard Waste Collection”); and

WHEREAS, on February 22, 2019, the Contractor submitted a proposal in response to provide the RFP, which is attached hereto as Exhibit B and incorporated herein by reference, that outlines its proposed services and obligations for the Yard Waste Collection within the Town and to perform such work as may be incidental thereto; and

WHEREAS, following a review of each proposal received by a team of Town staff and contractors, the Board of Trustees voted to award the contract to Contractor based on the proposal evaluation criteria outlined in the RFP and subject to the execution of a mutually acceptable agreement.

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

1. SCOPE OF AGREEMENT. This Agreement pertains to Yard Waste Collection. Contractor’s work under this Agreement shall consist of all the supervision, materials, equipment, labor, and other items necessary to provide seasonal collection of yard waste at a centralized location within the Town in accordance with the provisions of this Agreement.

2. SCOPE OF WORK. Beginning on May 1, 2020 the (“Service Start-Up Date”) and continuing for the full term of this Agreement, the Contractor shall provide Yard Waste Collection as more specifically described herein.

3. YARD WASTE DROP SITE COLLECTION. Contractor shall seasonally operate a centralized drop site (the “Drop Site Location”) to which Town residents and businesses may self-haul yard waste as proposed in Exhibit B and as may be modified by mutual agreement during the term of this contract. At a minimum, Contractor shall provide Yard Waste Collection in accordance with the following requirements:

   a. Location. The Drop Site Location shall be determined by mutual agreement of the Contractor and the Town. If the Drop Site Location is on Contractor-owned property, it must be within three (3) miles of the Carbondale Town Hall.

   b. Schedule. During each year of the term of this Agreement, the Drop Site Location shall be operated two (2) days per month between May and September (“Drop Site Collection Days”). Drop Site Collection Days shall occur on the same two (2) Saturdays each month. The Drop Site shall be open for a minimum of three (3) consecutive hours daily with start times at or after 8:00 AM and end times by 3:00 PM. The hours of operation shall be consistent within each Drop Site operating season.

   c. Requirements.
      i. The Contractor shall staff the Drop Site with Contractor personnel during all operating hours.
      ii. The Contractor shall provide all security, signage, safety, containers, clean-up, and other services including those activities needed to minimize the collection of any non-yard waste materials.
      iii. All collected yard waste shall be delivered to a permitted compost facility. Any necessary storage to accommodate compost facility hours shall be short-term and approved in advance by the Town.
      iv. Contractor shall maintain all Drop Site containers in clean and good working order. If the Drop Site is located on Town property, such property shall be returned to its original condition at the end of each Collection Day.
v. The Contractor shall request proof of eligibility for an individual to obtain access to the Drop Site. Access to the Drop Site shall only be provided to residents of the Town and commercial businesses located within the Town. Landscaping, yard care, and land-clearing and hauling companies shall not be allowed to deliver materials to the Drop Site.

4. PERSONNEL. The Contractor shall maintain adequate and proper staff whose expertise will assure efficient operation of the services herein specified. All vehicle drivers shall be:

   a. Licensed by the State of Colorado to operate commercial vehicles.
   b. Alert, careful, courteous, and competent.
   c. Appropriately trained in operations and safety measures.
   d. Provided with appropriate communication tools. Cells phones shall not be used in a moving vehicle.

5. TRUCKS AND EQUIPMENT. The Contractor shall provide all vehicles and equipment needed for collection of all trash and recyclables and for transfer to a landfill or recyclables processing facility in an efficient and environmentally sensitive manner. The Contractor shall not assign any vehicle to the program where the performance of its component parts is likely to cause damage to other components, jeopardize public safety, or be contrary to Colorado vehicle codes. The Contractor agrees to perform all work outlined in such a manner as to meet all accepted standards for safe practices during operations and to safely maintain stored equipment, machines, and materials consequential or related to the work. The Contractor shall agree additionally to accept the sole responsibility for complying with all local, county, state, federal or other legal requirements, including but not limited to safety and inspection regulations. Any vehicle leaks that originate during collection at the Drop Site Location or any transportation associated with collection shall be cleaned up as soon as possible but no later than the end of the same Drop Site Collection Day on which the leakage occurred. The Contractor will consider the use of alternative fuel vehicles during the Agreement term as fleet replacement occurs, diesel prices increase, and fueling stations in the Roaring Fork Valley become more accessible. A current evaluation of this option will be a necessary component of any fuel surcharge petition by the Contractor (see Section 8.a, below).

6. LITTER OR SPILLAGE. The Contractor shall not litter any premises in the process of making collections. During hauling, all trash and recyclables shall be contained, tied, or enclosed so that leaking, spillage, or blowing of materials is minimized. In the event of any material leakage or spillage by the Contractor, the Contractor shall be required to clean up the litter caused by the leakage or spillage no later than the end of the same Drop Site Collection Day on which the leakage or spillage occurred. The containers at the Drop Site Location shall be left in an orderly fashion.

7. FEES. The Contractor is solely responsible for all costs, charges, fees, fines, taxes, and any other assessments associated with collection, management, and disposal of trash, recyclables, and any other materials collected pursuant to this Agreement.
8. PRICE CHANGE. The Contractor’s rate schedule shall be adjusted annually beginning on the first anniversary of the Service Start-Up Date and annually thereafter to reflect changes in the cost of operations. The adjustments shall be as measured by fluctuations in the Consumer Price Index 12-month Western Region CPI-U for November as published by the U.S. Department of Labor Bureau of Labor Statistics for the West Coast Region. Any percentage change in the Consumer Price Index 12-month Western Region CPI-U for November shall equal the percent change in the Contractor’s rate schedule for the following year if it falls between 1.5% and 4%. In the event that the 12-month Western Region CPI-U for November is below 1.5%, 1.5% will be the maximum of three allowable percent (3%) per year change in the Contractor’s rate schedule. In the event that the 12-month Western Region CPI-U for November is above 4%, 4% will be the maximum allowable percent change in the Contractor’s rate schedule unless it is considered an “Uncontrollable Cost” as defined in Section 8(a).

a. Uncontrollable Costs. Contractor may, in writing, petition the Town for a rate schedule adjustment to accommodate costs such as landfill or recyclables processing tip fee increases, fuel cost increases, changes in applicable regulations, or changes in government charges (collectively, “Uncontrollable Costs”). Any year in which the regional Consumer Price Index 12-month Western Region CPI-U for November exceeds seven percent (7%) may also be considered an Uncontrollable Cost. In addition to the written notice, Contractor shall provide the Town with any other information regarding such increase reasonably requested by Town before any such increase becomes effective; provided, however, the parties recognize that notice of some increases in Uncontrollable Costs may be provided after the increase in such Uncontrollable Cost becomes effective. The Town reserves the right, as a condition of approval, to inspect Contractor records that demonstrate the need for an adjustment. The Town’s approval of any petition shall not be unreasonably withheld.

9. CONTRACTOR INVOICING AND COMPENSATION.

a. Monthly Invoices. No later than five (5) business days following the end of the calendar month, the Contractor shall submit to the Town monthly invoices for Yard Waste Collection services rendered during the previous calendar month in an electronic format acceptable to the Town. Invoicing shall and subsequent compensation will occur only for those months during which Drop Site Collection Days occur (i.e. May through September).

b. Any amount the Contractor owes the Town for any reason may be deducted from any monthly payment by the Town.

c. Auditing Rights. The Town retains all rights to audit the Contractor’s accounting records as they pertain to this Agreement.

10. RECORDKEEPING AND REPORTING.

a. Seasonal Report. The Contractor shall provide a seasonal resource recovery report (“Seasonal Report”) to the Town by November 1 of each calendar year.
The first Annual Report shall be submitted electronically by November 1, 2020. Each Seasonal Report shall, at a minimum, include a monthly and total seasonal breakdown of the following information:

i. Number of customers served (including repeat customers).
ii. Number of tons collected by material type (e.g., yard waste, brush, and other materials). Scale data is preferred but volume to weight conversion will be acceptable with a methodology approved by the Town.
iii. Recommendations for revised operations in future seasons.
iv. Any other information that the Town may reasonably request from time to time.

b. All reports shall be written and electronically submitted.
c. Recordkeeping. The Contractor shall maintain in its local office full and complete operations and service records pertaining to services provided under this Agreement (the “Records”). The Records shall be maintained for a minimum of three (3) years. The Records shall at all reasonable times be open for inspection and copying for any reasonable purpose of the Town upon prior written notice to the Contractor.

11. PROMOTION AND CUSTOMER SERVICE. The Contractor shall be responsible for all customer service and promotion functions, including the following:

a. Public promotion of the Drop Site’s hours of operation and acceptable materials, including but not limited to the maintenance of an up-to-date page on the Contractor’s website that includes such information.
b. The Contractor shall operate a customer service center that customers can call during normal business hours and leave messages after hours.
c. The Contractor shall resolve all customer requests and complaints to the satisfaction of customers, and report resolutions to the Town.

12. EFFECTIVE DATE, TERM, COMMENCEMENT OF SERVICES, RIGHT FOR RENEGOTIATION. This Agreement shall be deemed effective upon the signature of both parties (“Commencement Date”). This Agreement shall continue in effect for a term of two (2) years from the Commencement Service Start-Up Date unless terminated or renegotiated as provided herein. The parties shall have the option of renewing this Agreement for three (3) consecutive two (2) -year periods (“Renewal Period(s”)”). If either party desires to renew this Agreement, said party shall provide written notice to the other within ninety (90) days of the date the Initial Term or Renewal Period, as applicable, ends pursuant to this Section 12.

13. NO INTERFERENCE. Any activities, actions, or services performed under this Agreement shall not materially interfere with Town operations.

14. CONTRACTOR PERFORMANCE REVIEW. A review of Contractor performance will be used by the Town to evaluate the Contractor’s performance in completing the services required by this Agreement. The Town will conduct a review prior to any contract renewal. The
Town also reserves the right to conduct a full review of contractor performance at any time during the contract term.

15. FAILURE TO PERFORM. The Town expects high levels of collection and customer services. Improper and insufficient actions or omissions related to any service required by this Agreement will be discouraged, to the extent possible, through liquidated damages and through default for more serious lapses in service requirements. Contractor agrees that, as to the matters set forth in Section 16 below, damage to the Town and the public interests it protects are not susceptible to ready determination as to the dollar amount of such damage, and that the liquidated damage amounts that are set forth in Section 16 below are reasonable estimates as to the dollar amount of damage incurred in relation to each offending act or omission.

16. LIQUIDATED DAMAGES. Liquidated damages may be assessed for the actions and omissions set forth herein upon the following conditions:

a. The Town must timely provide Contractor written documentation which sets forth the location, date, time, duration and a detailed description of the specific nature of the violation.

b. Contractor shall have up to twenty-four (24) hours (excluding weekend days or holidays) or as otherwise noted below to resolve the violation to the reasonable satisfaction of the Town.

c. If after twenty-four (24) hours (excluding weekend days or holidays) the violation remains unresolved, the Town may assess liquidated damages and deduct said damages from the Contractor’s monthly invoice amount.

<table>
<thead>
<tr>
<th>PERFORMANCE STANDARD VIOLATION</th>
<th>LIQUIDATED DAMAGES</th>
<th>NUMBER OF OCCURRENCE TRIGGER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to provide minimum recycling or yard waste service (both minimum materials &amp; level of service)</td>
<td>$500 per day per customer request</td>
<td>1</td>
</tr>
<tr>
<td>Failure to collect materials spilled during collection</td>
<td>Two times cost of clean-up incurred by Town</td>
<td>3</td>
</tr>
<tr>
<td>Failure to clean-up vehicle leaks by end of same Drop Site Collection Day on which leak(s) occurred</td>
<td>Two times cost of clean-up incurred by Town</td>
<td>2</td>
</tr>
<tr>
<td>Failure to deliver trash or recyclables to permitted landfill or materials recovery facility – or yard waste to Pitkin County compost facility</td>
<td>$3,000 per incident</td>
<td>1</td>
</tr>
<tr>
<td>Failure to maintain containers in clean &amp; good</td>
<td>$100 per container</td>
<td>3</td>
</tr>
<tr>
<td>Event Description</td>
<td>Fine Amount</td>
<td>Frequency</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Failure to maintain vehicles that are clean, sanitary, covered &amp; in good working order (within 48 hours of notification or observation)</td>
<td>$250 per vehicle per occurrence</td>
<td>3</td>
</tr>
<tr>
<td>Failure to cover vehicles that contain trash, recyclables, yard waste or other solid waste</td>
<td>$250 per vehicle per occurrence</td>
<td>3</td>
</tr>
<tr>
<td>Failure to appropriately license drivers</td>
<td>$1,000 per driver per day</td>
<td>1</td>
</tr>
<tr>
<td>Failure to provide every driver with safety training &amp; enforce the no cell phone rule</td>
<td>$1,000 per driver per day &amp; $500 per cell phone infraction</td>
<td>1</td>
</tr>
<tr>
<td>Failure to provide required customer information</td>
<td>$500 per day</td>
<td>1</td>
</tr>
<tr>
<td>Delay in providing monthly billing data</td>
<td>$500 per day</td>
<td>2</td>
</tr>
<tr>
<td>Delay in submitting reports</td>
<td>$250 per day per report</td>
<td>3</td>
</tr>
<tr>
<td>Misrepresentation in records or reporting</td>
<td>$5,000 per incident</td>
<td>1</td>
</tr>
<tr>
<td>Failure to operate yard waste drop site at established location or during established days and hours</td>
<td>$500 per incident</td>
<td>1</td>
</tr>
<tr>
<td>Failure to leave yard waste drop site in original condition (if Town property)</td>
<td>Two times cost of clean-up incurred by Town</td>
<td>2</td>
</tr>
</tbody>
</table>

Notwithstanding the liquidated damages set forth herein, the Town has the right to exercise any and all remedies it may have with respect to these and other violations of Town codes, laws, rules and regulations and breaches of this Agreement. Any schedule of liquidated damages shall not affect the Town’s ability to terminate this Agreement for breach.

17. NON-APPROPRIATION. To comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado, if the Town fails to annually appropriate sufficient money to fund any financial obligations arising out of this Agreement, this Agreement will be considered to have been terminated by the Town.

18. TERMINATION.

   a. In the event of a failure by Contractor to perform any material provision of this Agreement, the Town may give written notice of such breach to the Contractor along with at least thirty (30) days to correct such breach (the “Cure Period”), provided that, if such breach is of a nature that it cannot be cured within 30 days,
then the time for cure shall be extended provided that Contractor promptly commences cure and diligently completes cure within a reasonable time. The Town may terminate this Agreement after such Cure Period if Contractor has not adequately corrected such breach in accordance with this Agreement (unless such breach and/or failure to cure is due to a Force Majeure event, in which case Contractor’s performance hereunder shall be suspended for the duration of such Force Majeure event and a reasonable period thereafter), and the Town so notifies Contractor in writing of such termination action. Except for such right during the initial term of this Agreement, neither party shall have any further obligation under this Agreement other than for claims for personal injuries or property damage as expressly provided in this Agreement and arising prior to such termination date.

b. In the event of a failure by Town to perform any material provision of this Agreement, the Contractor may give written notice of such breach to the Town along with at least thirty (30) days (the “Cure Period”) to correct such breach. Contractor may terminate this Agreement after such Cure Period if Town has not adequately corrected such breach in accordance with this Agreement and Contractor so notifies the Town in writing of such termination action.

19. INDEPENDENT CONTRACTOR. Contractor and any persons employed by Contractor for the performance of work hereunder shall be independent contractors and not agents of the Town. Any provisions in this Agreement that may appear to give the Town the right to direct Contractor as to details of doing work or to exercise a measure of control over the work mean that Contractor shall follow the direction of the Town as to end results of the work only. As an independent contractor, Contractor is not entitled to worker’s compensation benefits except as may be provided by the independent contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity. The Contractor is obligated to pay all federal and state income tax on any moneys earned or paid pursuant to this Agreement.

20. INSURANCE. Contractor shall procure and maintain, and shall cause any subcontractor of the Contractor to procure and maintain, the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained to cover all liabilities, claims, demands, and other obligations assumed by the Contractor. In the case of any claims-made on the policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The policies required below, except for the Worker’s Compensation insurance, shall include the Town as an additional insured.

   a. Worker’s Compensation. Contractor shall provide Worker’s Compensation insurance in an amount sufficient to cover obligations imposed by the Worker’s Compensation Act of Colorado and any other applicable laws for any such employee engaged in the performance of work under this Agreement.

   b. Comprehensive General Liability. Contractor shall provide Comprehensive General Liability insurance with the minimum combined single limits of ONE
MILLION DOLLARS ($1,000,000) and TWO MILLION DOLLARS ($2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall be on an occurrence basis and shall contain a severability of interests provision and a waiver of subrogation in favor of both the parties.

c. Automobile Liability. Contractor shall provide Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence with respect to each of the Contractor’s owned, hired or non-owned vehicles assigned to or used in the performance of services. The policy shall be on an occurrence basis and shall contain a severability of interests provision and a waiver of subrogation in favor of both the parties.

21. INDEMNIFICATION. The Contractor agrees to indemnify, defend, and hold harmless the Town and its elected and appointed officers, employees, agents, and insurers from and against any and all claims and liabilities (including without limitation claims and liabilities related to bodily injury or property damage), directly or indirectly arising out of, resulting from or related to this Agreement. The Contractor’s agreement to indemnify the Town shall include the obligation to pay any attorneys’ fees or costs incurred by the Town in defense of any such claims. The obligations of Contractor under this section shall survive the expiration or termination of this Agreement.

22. NOTICE. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such party’s representative at the address of the party set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.
23. FORCE MAJEURE. “Force Majeure” means any act or event that prevents a party from performing its obligations in accordance with the Agreement where the act or event is beyond the reasonable control and not the result of the fault or the negligence of the affected party and such party is unable to overcome such act or event through the exercise of due diligence. Such acts and events, include but are not limited to, acts of God, fire, explosion, accident, flood, severe storms, earthquake, epidemic, war, riot, strikes, lockouts, rebellion, and restraints or injunctions, not resulting from a party’s breach of any terms and conditions of this Agreement or any other contractual commitment. In cases of inclement weather, the Contractor and the Town shall agree for what period of time and upon what conditions collection service shall be suspended and such suspension shall be considered a Force Majeure event.

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ACCEPTED by the TOWN:

TOWN OF CARBONDALE, COLORADO,
a Colorado home rule municipal corporation

By: ________________________________
    Dan Richardson, Mayor
    511 Colorado Avenue
    Carbondale, CO 81623

ATTEST:

_______
Cathy Derby, Town Clerk

STATE OF COLORADO   )
   ) ss.
COUNTY OF GARFIELD  )

The foregoing instrument was acknowledged before me this ____ day of ____________, 2019, by Dan Richardson, Mayor, Town of Carbondale and Cathy Derby, Town Clerk, Town of Carbondale.

My commission expires ________________.
Witness my hand and official seal.

_____________________________________________________________________

Notary Public
ACCEPTED by the CONTRACTOR:

By: ___________________________________________________________________
    ___________________________________________________________________

   ___________________________________________________________________

   ___ Mike Hinkley

STATE OF COLORADO   )
COUNTY OF    ) ss.

The foregoing instrument was acknowledged before me this ___ day of _________, 2019, by ____________________________.

My commission expires ____________.
Witness my hand and official seal.

________________________________________________________________________

Notary Public
EXHIBIT A

Request for Proposals
EXHIBIT B

Contractor's Proposal
EXHIBIT C

Work by Illegal Aliens Prohibited. Pursuant to Section 8-17.5-101, C.R.S., et. seq., as amended, Contractor warrants, represents, acknowledges, and agrees that:

1. Contractor does not knowingly employ or contract with an illegal alien.

2. Contractor shall not knowingly employ or contract with an illegal alien to perform work or enter into a contract with a sub-contractor that fails to certify to Contractor that the sub-contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

3. Contractor has participated in or attempted to participate in the basic pilot employment confirmation program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the Department of Homeland Security (hereinafter, “Basic Pilot Program”) in order to confirm or attempt to confirm the employment eligibility of all employees who are newly hired for employment in the United States. If Contractor is not accepted into the Basic Pilot Program prior to entering into this Agreement, Contractor shall forthwith apply to participate in the Basic Pilot Program and shall submit to the Town written confirmation of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in the Basic Pilot Program, and shall confirm such application to the Town in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph 3 shall be null and void if the Basic Pilot Program is discontinued.

4. Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5. If Contractor obtains actual knowledge that a sub-contractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:

   (a) notify the sub-contractor and the Town within three (3) days of when Contractor has actual knowledge that the sub-contractor is employing or contracting with an illegal alien; and

   (b) terminate the subcontract with the sub-contractor if within three (3) days of receiving the notice required pursuant to this subparagraph the sub-contractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the sub-contractor if during such three (3) days the sub-contractor provides information to establish that the sub-contractor has not knowingly employed or contracted with an illegal alien.

6. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.
7. If Contractor violates this Exhibit B\textsuperscript{C}, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

By: _____________________________________

Dated: ________________
Board of Trustees Agenda Memorandum

Meeting Date: April 9, 2019

TITLE: Meadow Wood Drive Reclamation Project Contract

SUBMITTING DEPARTMENT: Public Works

ATTACHMENTS: Meadow Wood Drive Reclamation Project Contract

BACKGROUND
The 2019 budget included funding for replacing the pavement on Meadow Wood Drive from its intersection with SH-133 to the east end of the road. Staff prepared plans and specifications for the project and the project was advertised for bids. Bids were opened on March 26, 2019, and three bids were received.

DISCUSSION
The project consists of reclaiming the pavement, using the reclaimed material to shape a crown into the road, and then repaving the road with three inches of hot mixed asphalt. The reclamation process is basically grinding up the existing pavement and mixing it into the top three inches of the existing road base. Once mixed, the material will be shaped with a motor grader to create a crown in the road so that rain and snow melt will shed off of the road and into the gutter. Following the reclamation process a new pavement surface will be applied to the road.

A reclamation project of this type also aligns better to the Town’s Environmental Bill of Rights than a typical “remove and replace” project. On this project, the majority of the existing roadway will be reused in-place (reduce and recycle) instead of hauling in new material to create the crown in the road (cleaner air/fewer emissions).

It should also be noted that prior to the contractor beginning work on this project, staff will be working with our concrete contractor to replace some curb and gutter, install some sidewalk, and install some curb cuts on the project. Initially, this work was going to be part of the reclamation project, but separating it out and getting it done before the reclamation project starts will shorten the time that traffic is impacted by the reclamation project. It also likely reduced the overall cost of the project due to the small quantities of concrete work involved and
eliminating the need for the reclamation project contractor to subcontract for the concrete work.

Three bids were received for this project as follows:

<table>
<thead>
<tr>
<th>Company</th>
<th>Location</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frontier Paving, Inc.</td>
<td>Silt, CO</td>
<td>$113,389.00</td>
</tr>
<tr>
<td>Oldcastle SW Group, Inc. dba</td>
<td>Grand Junction, CO</td>
<td>$150,580.00</td>
</tr>
<tr>
<td>United Companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grand River Construction, Inc.</td>
<td>Glenwood Springs, CO</td>
<td>$154,768.00</td>
</tr>
</tbody>
</table>

Frontier Paving has worked in town in the past. They successfully completed the Barber Drive project a few years ago. Staff has also visited with local consultants and received positive reviews on their ability to deliver the project. Staff recommends that the Board accept Frontier Paving’s bid for the project and authorize the Mayor to execute the attached agreement for the work.

**FISCAL ANALYSIS**

The following is a breakdown of known costs of the items included in this year’s Street Surface Program Budget:

**Total Street Surface Program Cost:**

- Crack Sealing Program cost $34,000.00
- Chip Seal Program cost $102,712.50
- Meadow Wood Reclamation Project bid $113,389.00
- Known Street Surface Program cost $250,101.50
- Street Surface Program budget $360,000.00
- Budget Remaining for concrete on MW and Striping $109,898.50

The anticipated cost of the concrete work on Meadow Wood and this year’s striping are well within the Street Surface Program budget remaining.

**RECOMMENDED MOTION**

Staff recommends that the following motion be approved: **I move to award the Meadow Wood Reclamation Project bid to Frontier Paving, Inc., and authorize the Mayor to sign the attached agreement.**

Prepared by: Kevin Schorzman

Town Manager
2019 Town of Carbondale
Meadow Wood Drive Reclamation Project

CONSTRUCTION AGREEMENT
(unit prices)

THIS AGREEMENT is entered into by and between Frontier Paving, Inc., a Colorado Corporation, P.O. Box 1167, Silt, CO 81652 (“Contractor”), and the Town of Carbondale, Colorado, a Colorado home rule municipal corporation (“Town”). This Agreement is to be effective April 9, 2019, regardless of the date of signature(s) below.

For good and valuable consideration, the parties agree as follows:

1. **Work.** The Town desires to complete reclamation and repaving work on Meadow Wood Drive, within the Town of Carbondale as described in Attachment A. All plans, specifications, special provisions and addenda issued by the Town in the advertisement for bids are incorporated into this contract by reference. All of the Work will be directed and overseen by the Town’s Public Works Director. Contractor is willing to perform this Work upon request of the Public Works Director at the rates set forth in Attachment B.

2. **Compensation.** Contractor will be paid for the work to be performed pursuant to this Agreement at the unit prices set forth on Attachment B (“Contractor’s Compensation”). Contractor shall provide the Town with a performance and payment bond in an amount no less than 100% of the cost of the project in accordance with C.R.S. § 38-26-106 (2016). Any cost associated with the bond shall be included in the unit price for the work performed, and shall not be compensated directly.

3. **Payment.** In consideration for Contractor's performance of the Work, and subject to satisfaction of the Town and acceptance of the same by the Town, Contractor's Compensation shall be payable to Contractor in one payment for Work completed, based on Applications for Payment submitted by Contractor and approved by the Town. Town shall make said payment for the Work to Contractor no later than thirty-one (31) days after the Work is completed and accepted by Town. It shall be a condition precedent to the payment of Contractor that Contractor submits waivers and assignments of liens and such other documents, papers and statements as may be requested by and all in a form reasonably acceptable to Town. Title to all materials shall pass to Town upon final payment. Town may make the check for full and final payment payable jointly to Contractor and any of its subcontractors, material suppliers, laborers or equipment suppliers, and the amount so paid will apply to the Contractor’s Compensation.

4. **Independent Contractor Status.** Contractor shall perform all services and procure all materials as an independent contractor, retaining complete control over Contractor’s personnel, any subcontractors, and operations.

5. **Records.** Contractor shall keep full and detailed accounts as may be necessary for proper financial management under this Agreement. The Town shall be afforded access to all the Contractor's records relating to this Agreement or the Work.

6. **Immigration Compliance.** The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract nor contract with any subcontractor that fails
to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Contractor has verified or attempted to verify through participation in the Basic Pilot Program that the Contractor does not employ any illegal aliens. (For the purpose of this paragraph, “Basic Pilot Program” is defined to mean the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security). If the Contractor is not accepted into the Basic Pilot Program prior to executing this contract, the Contractor shall apply to participate in the Basic Pilot Program every three months until the contractor is accepted or this contract has been completed, whichever is earlier. The Contractor shall not use the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this contract is being performed. This paragraph shall not be effective if the Basic Pilot Program is discontinued.

If the Contractor obtains actual knowledge that a subcontractor performing work under this contract knowingly employs or contracts with an illegal alien, the contractor shall notify the subcontractor and the Town within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph, the subcontractor does not stop employing or contracting with the illegal alien. The Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor shall also comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the department is undertaking pursuant to C.R.S. 8-17.5-102(2).

7. **Contractor’s Obligations.** All work performed by the Contractor shall be performed in a workmanlike manner, pursuant to industry standards, according to the project plans, specifications and special provisions, and all applicable Carbondale Municipal Code provisions, and subject to Town’s satisfaction and approval. The Contractor shall clean up all debris generated by its work and shall keep mud from the street and near the site. Contractor shall also perform as follows:

   a. Contractor shall supervise and direct the Work, using Contractor's best skill and attention, and Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement. Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary to complete each Job in a workmanlike manner in strict accordance with the Contract Documents. Contractor accepts the relationship of trust and confidence established between the Town and Contractor by this Agreement. Contractor represents, covenants and agrees to furnish efficient business administration and superintendence, to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of the Town.

   b. Contractor warrants to the Town that all materials incorporated in the Work will be new unless otherwise specified in the Contract Documents, that all Work and materials will be free from faults and defects not inherent in the quality required or permitted under the Contract
Documents, and that all Work and materials will be in conformance with the Contract Documents and all applicable requirements of local building codes and zoning requirements and all federal, state and local rules, regulations, orders, statutes and ordinances. Any Work not conforming to these requirements shall be considered defective.

c. Contractor shall at all times keep all worksites and all adjacent trails and public streets free from accumulation of waste, materials or rubbish caused by Contractor's operations and shall at all times maintain a neat and orderly work area as required by Town. At the completion of the Work, the Contractor shall remove all such waste, materials and rubbish from and about the Premises, as well as Contractor's tools, construction equipment, machinery and surplus materials. Contractor shall comply with any and all provisions of applicable law with respect to the transportation, handling, use, storage, disposal, removal and disposal of hazardous material, hazardous substances or hazardous waste in accordance with all applicable law or governmental regulations, including any governmental order or requirement for cleanup or remedial work arising out of Contractor's transportation, handling, use, storage or disposal of such hazardous materials on or about the Premises.

d. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to (a) all employees on the Work and other persons who may be affected thereby, (b) all the Work and all materials and equipment to be incorporated herein, and (c) other property at the site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. Where consideration of labor, equipment or safety is involved, Contractor is solely responsible for all decisions and Town shall not incur any liability as a result of Contractor's decisions.

e. All claims which Contractor has or wishes to assert against Town must be presented in writing to Town not later than ten (10) days after Contractor is aware or should have been aware that a claim will or does exist, or such longer time as may be required by law, even though the exact nature of the claim and the amount of the claim may not be determinable at that time. The nature of the claim and the amount of the claim must be presented to Town in writing as soon thereafter as Contractor has or should have had such information, and Contractor hereby waives all claims not presented as provided herein.

f. Upon request of Town, Contractor shall submit for Town's review and approval a schedule ("Schedule") for the performance of the Work. When the Schedule is approved by Town, it shall not be exceeded by Contractor except as may be approved in writing by Town, provided however that, although time is of the essence, the Contractor shall not be responsible for delays caused by matters outside of Contractor's or its sub-contractors' control. In no case shall the completion date listed on the schedule be beyond the completion date listed in paragraph 11.

g. Contractor shall promptly pay all bills and charges for its materials, labor and other costs in connection with the Work and shall keep the project site and all improvements thereon free and clear of any liens, charges or claims of Contractor or its subcontractors, material suppliers, employees and agents. In the event a lien shall be filed in connection with the Work, Contractor shall, at its own cost, cause such lien to be discharged within ten (10) days from recordation of the lien. In the event Contractor fails to discharge the lien when required hereunder, Contractor shall be immediately liable to the Town and shall pay to the Town all costs, damages and losses incurred
by the Town in connection with such lien, including but not limited to attorneys' fees, costs resulting from delay in closing sales, and the cost of bonds to release the lien.

8. **INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN AND ALL OTHER OWNERS OF LAND UPON WHICH THE WORK WILL OCCUR, AND THEIR RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, CLAIMS AND LIABILITIES RELATING TO BODILY INJURY OR PROPERTY DAMAGE), DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE WORK, INCLUDING, WITHOUT LIMITATION, ANY FAILURE BY CONTRACTOR OR ITS SUBCONTRACTORS TO PROPERLY PERFORM THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, OR NEGLIGENCE OR MISCONDUCT OF CONTRACTOR OR CONTRACTOR'S OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS.

9. **Insurance.** Contractor will also obtain, pay for and maintain the coverage and amounts of insurance coverage not less than those below and will provide the Town with certificates issued by insurance companies satisfactory to Town to evidence such coverage prior to the commencement of any work, and upon renewal or change in any such policy. The Town shall be named as an additional insured on all such policies. Contractor will procure and maintain the following types of insurance at limits no less than stated below:

   a. Workers’ Compensation complying with the laws of the State of Colorado and Employer’s Liability Insurance in an amount not less than $1,000,000.00, as well as any similar coverage required for this work by applicable federal or state law.

   b. Comprehensive Automobile Liability Insurance in an amount not less than $1,000,000.00 combined single limit.

   c. Commercial General Liability Insurance with an installation floater in an amount not less than $1,000,000.00 per occurrence, specifically insuring Contractor’s indemnification obligation under this contract.

   Each of the above-named policies shall be issued by an insurer acceptable to Town and be on a form satisfactory to Town, with exclusions and deductibles acceptable to Town, whose approval shall not be unreasonably withheld. The Workers’ Compensation and Employer’s Liability Insurance shall include a Waiver of Subrogation in favor of the Town. In addition, the Town, shall be named as an additional insured on the Comprehensive Automobile Liability policy and the Commercial General Liability policy (by endorsement form number CG 20 26, which policies must provide coverage to the Town that is primary with respect to any other insurance carried by said entities. Additional insured coverage shall include products and completed operations coverage. Certificates of Insurance evidencing the above insurance coverage shall be furnished to Town before Contractor starts any Work. Policies shall be furnished to Town upon request. Insurance similar to that required of Contractor shall be provided by all subcontractors to cover their operations performed under this Agreement; provided, however, that the limits of such
insurance may be adjusted in accordance with the nature of each subcontractor’s operations. Contractor shall maintain Certificates of Insurance from all subcontractors, enumerating, among other things, the waivers in favor of, and insured status of, the Town as required herein, and shall provide to Town a copy of each Certificate of Insurance from each subcontractor upon request.

10. **Subcontractors.** The subcontracting of any of the Work shall not relieve Contractor of any of its liabilities or responsibilities under the Contract Documents. Subcontracting will be performed only with the permission of the Town. Contractor shall make prompt payment to its subcontractors for Work performed and/or materials supplied. Any retainage on payments due subcontractors shall be made only after Contractor consults with the Town and obtains the Town’s prior written consent and approval.

11. **Timing.** Time is of the essence. All Work shall be completed by Contractor between June 17, 2019, and October 15, 2019, unless otherwise agreed in writing by the Town Manager or Public Works Director and Contractor.

12. **Performance.** Payment may be withheld by the Town on account of (1) defective Work not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) damage to Town or another contractor, or (5) failure to timely carry out the Work in accordance with the Contract Documents. The acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor in connection with the Work except those previously made in writing and identified by Contractor as unsettled on Contractor’s Application for Payment for the Work.

13. **Lien Waivers.** At the time of final payment for each work item or project requested by the Town, the Contractor shall deliver to the Town a final lien waiver. Final payment shall be made only after the work item or project has been fully performed by the Contractor and the Town has accepted the Work.

14. **Change orders.** The Town may order changes in the Work consisting of additions, deletions or modifications, the Contractor's Compensation and time for completion being adjusted accordingly. All such changes in the Work shall be authorized by written Change Order signed by the Town. The Contractor's Compensation and time for completion may be changed only by Change Order. Cost or credit to the Town from a change in the Work shall be determined by mutual agreement. No aspect of the Contract Documents provided after the date of this contract shall be deemed a change in the Work, unless the particular Contract Document represents a change in the scope of Work (including detail) which was not and could not have been reasonably inferred or anticipated by Contractor, as an experienced and prudent contractor.

15. **Breach waivers.** In the event that either party hereto waives a breach of this Agreement by the other party, such waiver shall not be deemed to be or be construed a waiver of any subsequent breach of the terms hereof.

16. **Defective Work/Corrections/Warranties.** Contractor shall promptly correct any Work found to be defective within two years from the date of completion of the work item or project or within such longer period of time as may be prescribed by law. Contractor also guarantees all equipment, material, supplies, and work furnished on the job against defects for two years from
final completion of the Work. Contractor agrees, at its sole cost, to make all repairs and correct such defects under the warranty. Failure to correct such defects within the required time shall constitute a breach of this Agreement. Contractor expressly agrees that all warranties made by Contractor in this Agreement shall survive the termination of this Agreement and completion of the Work.

17. **Termination.**

   a. If Contractor does not fully comply with the terms of this Agreement or any other contract documents, then the Town may, without prejudice to any other right or remedy and after giving Contractor seven (7) days prior written notice and opportunity to cure the breach, terminate the services of Contractor.

   b. The Town may also, at any time, terminate for its own convenience any part of the Work or all remaining Work for any reason whatsoever by giving written notice to Contractor specifying the part of Work to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If any part of the Work is so terminated, Contractor shall be entitled to payment for actual costs directly related to Work thereafter performed by Contractor in terminating such Work including cancellation charges of subcontractors and material suppliers, provided such Work is authorized by Town. In case of such termination, the Town will issue a Change Order making any required adjustment to the scheduled date of completion and/or the Contractor's Compensation for the Work.

   c. In the event of termination, the Town may offset against any sum due Contractor under the Contract Documents the amount of any obligations of Contractor to the Town, whether or not arising out of this Agreement.

18. **Dispute Resolution.** This Agreement shall be construed, interpreted and governed by the laws of the State of Colorado. In the event that legal proceedings are instituted by either of the parties for enforcement of this Agreement, such proceedings shall be brought in the Garfield County District Court. The prevailing party in any such dispute shall be entitled to an award of reasonable attorneys’ fees and costs, including expert witness fees.

19. **Binding Effect/Assignment.** This Agreement shall be binding upon the parties hereto, their partners, successors and assigns. This contract and the documents incorporated herein by reference constitute the entire agreement between the parties and may be altered, amended or repealed only by duly executed written agreement. Neither party will assign the contract without the written consent of the other. Contractor will not be relieved of any of the responsibilities of this contract by assigning or subcontracting the work or any portion thereof.

20. **Town Budgeting/TABOR compliance.** The Town has appropriated funds out of its 2019 budget in the amount of Contractor’s Compensation. Nothing in this contract shall be construed as a multi-year budgetary obligation and, pursuant to C.R.S. 24-91-103(6), no change order shall issue which causes the aggregate amounts to be paid by the Town pursuant to this contract to exceed the amount appropriated.

21. **Equal Opportunity Employer.** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability or national origin. Engineer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, disability, or national origin. Such action shall include but not be limited to the following: employment,
upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the equal opportunity laws. Contractor shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal, State, or local laws and regulations.

22. **Governmental Immunity.** Nothing herein shall be interpreted as a waiver of governmental immunity, to which the Town would otherwise be entitled under §24-10-1, et seq., C. R. S., as amended.

23. **Negotiation and Drafting of Agreement.** The parties agree and acknowledge that both parties have participated in the negotiation and drafting of this Agreement and no presumption shall exist in favor of either party hereto. This Agreement shall not be construed against either party merely because of said party’s drafting of this Agreement.

24. **Agreement Administration and Notice.** For purposes of administering this Agreement, the Town’s Public Works Director shall represent the Town in carrying out the purposes and intent of this Agreement. Any notices required to be given pursuant to this Agreement shall be delivered as follows:

To the Town: Town Manager
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

Copy to: Town Attorney
Town of Carbondale
511 Colorado Avenue
Carbondale, CO 81623

To Contractor: Damian Ellsworth, Vice President
Frontier Paving, Inc.
P.O. Box 1167
Silt, CO 81652

25. **Entire Agreement.** This Agreement shall be binding upon the parties hereto, their successors and assigns. This contract and the documents incorporated herein by reference constitute the entire Agreement between the parties and may be altered, amended or repealed only by duly executed written Agreement.
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____
day of ____________________, 2019.

TOWN:

TOWN OF CARBONDALE
a Colorado home rule municipal corporation

By: __________________________
    Dan Richardson, Mayor

ATTEST:

________________________________________

CONTRACTOR:

By: _________________________
    [Signature]

STATE OF COLORADO )
    ) ss.
COUNTY OF GARFIELD )

The foregoing AGREEMENT was acknowledged before me this 1st day of April, 2019 by Damian Ellsworth.

Witness my hand and official seal.

My commission expires: 06/29/2020

Notary/Public

KRYSTIE MORENO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20074012359
My Commission Expires June 29, 2020
ATTACHMENT “A”

REQUEST FOR BIDS

Town of Carbondale

Meadow Wood Drive Reclamation Project

Bids are due on Tuesday, March 26, 2019 at 2:00 pm, to Kevin Schorzman, Public Works Director, Town of Carbondale, 511 Colorado Avenue, Carbondale, Colorado 81623, at which time they will be opened and read aloud. The project consists of full-depth reclamation and repaving of Meadow Wood Drive in Carbondale, CO. Construction will include milling the existing asphalt and approximately 3 inches of the existing road base, using the mixed material to create a crown in the road, and new 3-inch asphalt pavement. Bid packets can be obtained on the Town of Carbondale website. Contact Kevin Schorzman at 970-510-1217, or kschorzman@carbondaleco.net for more information.
ATTACHMENT “B”
Frontier Paving, Inc. Bid
Dear Town of Carbondale,

Your gift to the Aspen Valley Ski & Snowboard Club affords children without financial means the opportunity to ignite their love of skiing and snowboarding. Your gift gives local kids access to instruction, equipment, and transportation. Your gift creates lifelong friendships, provides children with mentors and strengthens their sense of belonging to our community.

The mountains we love tightly connect the Roaring Fork Valley and thanks to you we are able to share the mountains with the next generation. Together we are including all the children in the valley and giving them pathways to fun and freedom in their own backyard.

Your donation(s) to AVSC allows us to provide opportunities for children to pursue their outdoor dreams.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Appeal</th>
<th>Non-Deductible Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2/18/2019</td>
<td>$932.00</td>
<td>Grant</td>
<td></td>
</tr>
</tbody>
</table>

$0.00

Thank you for being a leader, and thank you for having the foresight to give.

Sincerely,

Mark Godomsky
Executive Director
mgodomsky@teamavsc.org
(970)205-5103

Miah Wheeler
Development Director
mwheeler@teamavsc.org
(970)205-5102

This letter acknowledges receipt of a voluntary contribution, to the Aspen Valley Ski/Snowboard Club, Tax ID# 84-6042225. Additionally, no goods or services were accepted by donor. AVSC is a not-for-profit 501(c)(3) tax-exempt educational organization. Donations are deductible to the full extent of the law. Please keep this letter in your tax files.
MINUTES
ENVIRONMENTAL BOARD
January 28, 2019

CALL TO ORDER
Colin Quinn called the meeting to order at 6:00 pm on January 28, 2019 in the Town Hall meeting room.

ROLL CALL
The following members were present for roll call:

E-board Members: Colin Quinn, Chairperson
Patrick Hunter, Member
Sandy Marlin, Member
Jim Kirschvink, Member
Frosty Merriott, Member
Joseph Demoor, Member
Scott Mills, Member
Becky Moller, Member

Town Staff Present: Mark O’Meara, Staff Liaison
Angie Sprang, Board Administrator
Heather Henry, Trustee Liaison

Guests: Sarah Gruen, CORE

PERSONS PRESENT NOT ON THE AGENDA
There were no person’s present, not on the agenda, who wished to address the board.

CONSENT AGENDA
Motion Passed: Colin moved to approve E-board meeting minutes from December 2018. Sandy seconded the motion, and it was unanimously approved.

ASPEN GLOBAL CHANGE INSTITUTE PRESENTATION
Elise, Research & Education Coordinator, Aspen Global Change Institute, informed the board about their mission and current work.

DANDELION DAY UPDATE
Natalie Rae informed the commission that Dandy Day has 5 vendors already, and a band has offered to play. She is working to update the Dandy Day website, and would like to work with the commission on a campaign idea. The idea of a subcommittee was presented, and schedules are full. May 11th is Dandelion Day 2019. Natalie will continue to work on planning the event as an independent contractor.
ENGLISH UPDATE & DISCUSSION
Sarah provided an overview of the new building codes.

- IECC 2015 adopted – energy code
- Commercial code is the next step
- Holistic and sustainable
- Uniform checklists
- Encourage builders to implement energy efficient components
- Solar recommendations – new construction has solar regardless of square footage
- Very close eye on cost impacts and quality for low income housing
- Existing housing stock will be a challenge in reaching net zero goals
- Goal is net zero by 2030
- New code is in zero energy ready template

Pat motioned that the E-board approve recommendations of the subcommittee, Jim seconded the motion, and it was unanimously approved.

February 7th there is an event “Brats and Watts” put on by Holy Cross Energy to discuss renewable energy options.

How to address existing housing stock will continue to be reviewed.

Recommendations for changes can be emailed to Sarah Gruen, CORE.

VCAPS REPORT
Colin provided an informative update on the VCAPS workshop report. Points made were:

- Impressive report
- Water is the new oil
- Landscaping w/native plants
- Wild fire is a huge vulnerability in droughts
- 2019 budget – opening additional wells in RF well field legal legwork
- 2020 budget – using additional wells in RF well field
- Improvements in parks in rec, power backups for our water system
- Town is working on gap analysis of action items – if anyone would like to work on that reach out to Angie
- The education component of the report is important – impacts to ranching communities
- Dandelion Days education opportunity!

UPDATE OF TOWN DEVELOPMENT PLANNING
Discussion ensued:

- 115 units near new city market
- New city market
- Corner of main and HWY 133
• Multiple vacant lots and potential for development
• Red hill lofts
• CLEER or CORE – opportunities for Net Zero Energy District – what are the barriers to developer’s owner-operators
• Visiting the tree board and parks and rec board
• Keeping an eye on the public process as Citizens is key

UPDATE ON REDUCED PLASTIC USE
Sandy provided a reduced plastic use project update. She is working on surveying small business restaurant owners about plastic use, and has already spoken to 13 businesses in Town. Sandy is distributing “Last Straw” campaign materials, and will return to the E-board with more data. Many of those restaurants surveyed are using alternative compostable straws, and or no straws at all. All of the 13 restaurants are composting.

E-BOARD 2019 PRIORITIES
Colin asked the board to present 1-3 priority items for this year’s proposed priorities. Items noted were:
• Frosty:
  o Referral board with Tree & Parks n Rec board
  o Plastic reduction or banns
  o Lighting – Carbondale as a Dark Sky Community
• Heather:
  o Referral echoed
• Pat:
  o Progress of the E-board
  o E-board better known in community
  o Starter Solar Sets
• Scott:
  o Referral echoed
  o Regionalism
• Sarah:
  o Referral echoed
  o Residential Official Building Program adopted w/solar amendment
  o Reimaging carbon goals and accelerating those
  o Working diligently on Net Zero
  o Regionalism
• Mark:
  o Outreach – what you flush & put in the sink, water use – staff time limitations challenge to do outreach
• Joseph:
  o Alternate transportation – outreach and education around that
  o Plastic reductions – restaurants
  o Dandelion Days
• Sandy:
  o Bag ban resurrection
- Plastic reduction
  - Colin:
    - Facilitate success
    - Trees labeled
    - Regional E-board Initiative
    - Dandelion Day Sustainable
  - Jim:
    - Dandelion Day Sustainable – sponsor or absorbed by a non-profit
    - Plastics reduction – proposals & borrowing from other Towns with ban’s in effect – Ridgeway, Silver City
    - Referral board – solar amendments
  - Angie:
    - VCAPS gap analysis & progress tracking

**ADJOURNMENT**
The January 28, 2019, regular meeting adjourned at 8:30 p.m. The next regular meeting is scheduled on February 25, 2019 at 6:00 pm.

Respectfully submitted,
Angie Sprang
Board & Commissions Clerk
CALL TO ORDER
Dan Bullock called the meeting to order at 6:00 pm on February 2019 in the Town Hall meeting room.

ROLL CALL
The following members were present for roll call:

Members Present: Dan Bullock, Co-Chairperson  
Kim Bock, Co-Chairperson  
Sarah, Member  
JoAnne Teeple, Member  
Sarah Kemme, Member  
Brett Krudener, Member  
Lisa Paige, Member

Town Staff Present: Angie Sprang, Administrator  
Mike Callas, Town Liaison

Guests & Observers: None Present

CONSENT AGENDA
The Tree Board unanimously accepted the minutes from January 2019.

PERSONS PRESENT NOT ON THE AGENDA
There was no one present not on the agenda who wished to address the board.

TRUSTEE MEETING
Arbor Day – Sopris sun will do an article in mid-March. Heritage Park will donate a tree. Marty Silverstein will donate a tree. A tree will be donated in memory of Rich Gilmore. CCAH, KDNK, Marble Distillery may also donate. Kay Burinner’s fund will match donations. Last year 7 trees were planted by volunteers. Arbor Day is on Saturday, May 4th. Latino outreach is ideal to be inclusive of all community members. The Town Arborist is working on mapping planting locations.

Review of Planting Plans – The board reviewed the 3rd street single family development. Concerned about fruit trees in right of way and on property in general with current wildlife in town (deer, bears). Requirements for public right of way tree planting met. Recommended not to put berm, or boulder seeding in right of way. Recommend to use list of approved trees as they are healthier in our environment.

Education – Tree app for a tree walk is something to bring up with Trustees for funding request.

Tree City USA – Carbondale is celebrating 25 years of Tree City USA. Tree City USA sent Carbondale a special kit of items to share with the community for the arbor day festivities.

UDC Refinements for Tree Planting – Ordinance 5 could be included in the UDC.

Fencing in Sopris Park to protect trees from deer living in Town.

VCAPS REPORT & COMMISSION HANDBOOK SAMPLE
Marty asked the board to consider VCAPS in their annual planning.

The Tree board will work on a commission handbook for inclusion on the Town website.
ADJOURNMENT
The February 21, 2019, regular meeting adjourned at 7:15 p.m. The next regular meeting is scheduled on February 21, 2019 at 6:00 pm.

Respectfully submitted,
Angie Sprang
Board & Commissions Clerk
CALL TO ORDER
Nick Miscione called the August 23, 2018 meeting to order at 6:30 p.m.

ROLL CALL
The following members were present for roll call:

Members:
- Ashley Allis, Member
- Carole Klein, Member
- Nick Miscione, Interim Chair
- Eric Doud, Member

Town Staff Present:
- Angie Sprang, Boards & Commissions Clerk
- John Leybourn, Staff Liaison

CONSENT AGENDA
Motion Passed: Ashley Allis moved to approve Carbondale Historic Preservation Commission (CPHC) meeting minutes from November 2017. Nick Miscoine, seconded the motion, and it was unanimously approved.

PERSONS PRESENT NOT ON THE AGENDA
There was no one present wished to address the board.

40 N 4TH ST REVIEW
Daniel Furgeson and John Ford presented the project specifics to the Board. They showed an artistic rendering of the plan changes, and described the proposed changes. Discussion ensued, points made were:
- The building has not been deemed a building of merit
- It was built a century ago
- Concrete w/o rebar, timber frame on inside & conventional framing on the outside
- The building has been altered considerably
- Offices upstairs are occupied by the owner and they will remain as is
- The restaurant will have more seating place as the former layout has a great deal of storage

Staff noted that the plan is straight forward and has been reviewed and approved. The board recommended to try and preserve the existing exterior as much as possible. The applicant agreed, and the review concluded.

Eric Doud suggested that the HPC work to develop a review process with submission requirements.

ADJOURNMENT
The August 23, 2018 regular meeting adjourned at 7:15 p.m. The next regular meeting is scheduled on September 6, 2018 at 6:30 pm.

Respectfully Submitted,
Angie Sprang
MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday March 14, 2019

Commissioners Present:
Michael Durant, Chair
Ken Harrington, Vice-Chair
Nicholas DiFrank (1st Alternate)
Jay Engstrom
Jeff Davlyn

Staff Present:
Janet Buck, Planning Director
John Leybourne, Planner
Tarn Udall, Town Attorney

Commissioners Absent:
Jade Wimberley
Marina Skiles
Tristan Francis (2nd Alternate)
Nick Miscione

Other Persons Present

The meeting was called to order at 7:00 p.m. by Michael Durant.

February 28, 2019 Minutes:

Jeff made a motion to approve the February 28, 2019 minutes. Nicholas seconded the motion and they were approved unanimously.

Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

Resolution 3, Series of 2019, approving a SUP at 296 S. 3rd Street
Ken made a motion to approve Resolution 3, Series of 2019. Jay seconded the motion and it was approved unanimously.

Continued Public Hearing – Minor Site Plan Review, Special Use Permit & Variances – 159 Sopris Avenue - Applicants: Jerod & Sharon Samuelson

Janet said that this is a continued public hearing to consider a Special Use Permit and a Minor Site Plan Review to renovate the abandoned CMU structure and convert it into a single family residential dwelling. She stated that the request will require a variance from the 5 ft. front yard setback to allow a 0 ft. setback and a variance from the minimum side yard setback of 5 ft. to allow a 3.5 ft. setback.
Janet explained that the Commission first considered this item on January 10th. She said that the hearing was continued to tonight to allow time for the applicant to address concerns regarding the building’s encroachment onto the property to the east.

Janet stated that the applicants have resolved the problem by removing 3.5 ft. along the length of the easterly side of the building. She said that this eliminates the encroachment and provides a 3.5 ft. setback to allow room for maintenance of the structure.

Janet stated that the applicant has also submitted some additional information in response to Commission’s comments:

- ILC prepared when the applicants purchased the property. It does not show the encroachment.
- New ILC prepared by Sopris Engineering.
- Plan which shows a distance of 22 ft. from the front door to the driving lanes of Sopris Avenue
- South building elevation, letter noting the use of stucco and the addition of landscaping along the south side of the building façade.

Janet said that she did a new zoning check based on the new Site Plan. She explained that with the exception of the setbacks, the proposal is in compliance with the UDC.

Janet noted for the record that when she says that the building wall is 3.5 ft. from the east property line. She said that she did not take into account the roof overhang, which is about a foot. Janet said because of that, the proposal is for a 3.5 ft. setback for the building and 2.5 ft. setback for the roof overhang. She noted the noticing should be fine as it was for a 0 ft. setback.

Janet thanked the applicants for their efforts getting the encroachment cleaned up.

Ken said that the plan shows 187 sq. ft. of private outdoor space and that the requirement is 210 sq. ft.

Janet stated that this is a single family home and that she wasn’t quite sure whether the code requires private outdoor space but since they showed it on their site plan, she included the square footage. She noted that the size can easily be increased.

Jay asked about condition #2, that all drainage shall be retained on site. He said that he has never seen this request before.

Janet explained that this condition stemmed from when there was an encroachment over the east property line. Staff didn’t want the structure to drain onto that property. She said that this condition is still applicable for the right-of-way.
Michael stated that the shed roof goes away from the right-of-way.

Janet stated then the condition is probably not necessary anymore

Nicholas stated that taking care of one’s own drainage is not a bad idea. He said that it won’t create a swale over time.

The applicant, Jerod Samuelson, explained that as per the Commission’s recommendation that they reached out to the neighbors regarding the encroachment. He said that they decided it was best to move the wall to clear up both properties from the encroachment.

There were no members of the public present.

**Motion to Close Public Hearing**

A motion was made by Jeff to close the public hearing. Nicholas seconded the motion and it was approved unanimously.

Ken asked if there was enough of the remaining structure left after cutting off the 3 feet to make it economical.

Sharon Samuelson stated that ultimately that they would have like to have the extra square footage to maximize that east side but that it wasn’t feasible to move the entire structure to keep the existing walls.

Jerod stated that they will still have a two bedroom home and that it comes out to be about 150 sq. ft. that they are losing. He said that they have talked to a contractor who advised them that it will still be a marketable property.

Ken said that he appreciates the clarification of the setback from the road.

Michael said that ten percent of the old building is being eliminated.

Nicholas told the applicants that he appreciates their efforts.

Further discussion ensued regarding drainage.

**Motion**

Ken made a motion to approve the Site Plan, Special Use Permit, Front and Side Yard Variance with the conditions and findings in the Staff report. Nicholas seconded the motion and it was approved unanimously.

Yes: Michael, Jay, Nicholas, Ken, Jeff
No: none
PUBLIC HEARING – Unified Development Code (UDC) Zone Text Amendment – Wireless Facilities

Janet introduced one of the Town Attorneys, Tarn Udall of Holland and Hart. Tarn said that she works with Mark Hamilton and that she has been helping Janet with the wireless facilities regulations.

Janet stated that this is a public hearing for the purpose of considering amendments to the UDC to include regulations related to Wireless Facilities, including Small Cell Antennas.

Janet said that the Commission is required to hold a public hearing and recommend approval of the amendments or recommend denial. She stated that the Commission may also continue the public hearing.

Tarn outlined the following:

- **By way of background,** the Town is developing these regulations in response to recent developments in federal and state law which require that the Town address certain types of wireless facilities.

- **State Statute**
  - enacted in 2017 to address small cell facilities and networks and access to rights of way
  - statute gives providers right to locate small cell facilities on municipal infrastructure in public rights-of-way
  - makes small cell facilities a use-by-right in any zone district
  - shortens timeframe that municipalities must act on an application
    - 90 days for complete applications for new small-cell facilities
    - 150 days for other facilities
  - treat installation of multiple facilities as a consolidated application/single permit
  - no discrimination amongst providers

- **FCC**
  - on the federal level and more recently, the FCC approved new rules to streamline deployment of small cell technology
    - new “shot clocks” for processing small cell applications
      - 60 days for small cell facilities on city infrastructure
      - 90 days from when complete application – new standalone
      - 150 days for new wireless facilities – excluding small cell
      - limiting permit fees municipalities can charge providers
  - at same time, FCC issued a declaratory ruling, to clarify that federal statute prohibits municipalities from adopting regulations that “materially inhibit” small wireless facility deployment
  - municipalities have until April 14 to adopt regulations/design standards for new small cell antenna facilities
FCC order is being challenged in federal court

Janet stated that the latest generation of wireless technology is called Fifth Generation or 5G. She said that 5G is intended to provide faster wireless service and support more wireless connections. She said that 5G utilizes small cell antenna technology.

Janet explained that as a result, wireless providers such as Verizon, AT&T, T-Mobile, etc., will most likely be requesting approval to allow the installation of small cell antennas. She said that because of their small coverage area, there needs to be a greater number of small cell facility sites than traditional cellular towers. She stated that the small cell antennas can be placed on buildings, light poles, towers and new base stations or alternative towers. She said that they are generally three cubic feet in size.

Janet said that Tarn Udall and I began drafting language to address wireless facilities. She stated that as we began this work, we found that the UDC is mostly silent on wireless facilities. She explained that in order to bring the UDC up to date with wireless facility technology, the draft code amendments also include regulations on other wireless facilities.

Janet said that the draft regulations are a work in progress. She stated that we anticipate it will take two meetings for the Planning Commission to review them, provide direction to Staff and finalize them for the Board’s consideration. She explained that there are some threshold questions which we would like the Commission to weigh in on so Staff can complete the draft regulations.

Janet stated that the main changes to the UDC would be:

- Adding definitions
- Establishing new uses in the Land Use Table
- Creating new review processes
- Adding design standards for wireless facilities and infrastructure associated with those facilities, i.e., base stations, towers, etc.

**Points of Discussion**

- Clarify whether the wall-mounted and roof-mounted facilities are small cell or non-small cell
- Check Aspen’s regulations
- Can you prohibit wall- or roof-mounted wireless facilities in R/LD and OTR
- Do not allow non-small in the R/LD and OTR zone districts
- Utilize conditional use permits instead of special use permits
- Will old technology still be relevant? The answer is yes
- Since the rights-of-way aren’t zoned, is there a way to classify them?
• Street hierarchy mapping, i.e., alley, collector, arterial, sub-arterial was suggested
• Higher level of camouflage in street verses alley
• Protect the alleys
• Alleys can provide adequate separation
• Japan was overrun with wireless facilities and it changed their character
• How restrictive can the Town be? That is the preference.
• It is easier to loosen regulations rather than make them tighter
• Possible to prohibit small cell towers?
• Look into manhole cover or underground only
• Incentivize them to work with private property owners
• Do we have ability to determine what information is collected? Surveillance City?
• Will a provider overwhelm Staff with applications?
• Sequencing rules, cap on number applications submitted
• Boxes and transformers can be more of an issue

**Motion to Continue the Public Hearing to March 28**

Jeff made a motion to continue the public hearing to March 28, 2019. Ken seconded the motion and it was continued unanimously.

**Staff Update**

Janet gave an update on the small cell wireless code she has been working on.

**Commissioner Comments**

Jay indicated that he would not be at the 4-11-2019 meeting.

Nicholas said he would not be at the March 28, 2019 meeting.

**Motion to Adjourn**

A motion was made by Ken to adjourn. Jeff seconded the motion and the meeting was adjourned at 8:34.