

1 INTERGOVERNMENTAL AGREEMENT
2 (Recreation Road and Trail Management)
3

4 This Intergovernmental Agreement (“**Agreement**”) is dated _____,
5 2020 (“**Effective Date**”) and is between the TOWN OF BRECKENRIDGE, a Colorado
6 municipal corporation (“**Town**”) and SUMMIT COUNTY, COLORADO, acting by and through
7 the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO
8 (“**County**”). The Town and the County are sometimes referred to individually as a “**Party**”, or
9 together as the “**Parties**.”
10

11 WHEREAS, the Town is a home rule municipal corporation organized and existing under
12 Article XX of the Colorado Constitution; and
13

14 WHEREAS, the County is a quasi-municipal corporation organized and existing under the laws
15 of the State of Colorado; and
16

17 WHEREAS, the County holds a Special Use Authorization approved by the U.S.
18 Department of Agriculture Forest Service (“**Forest Service**”) on July 17, 2019, a copy of which
19 is marked “**Exhibit “A**”, attached hereto, and incorporated herein by reference (“**SUA**”); and
20

21 WHEREAS, the SUA applies to certain Forest Service lands located in Summit County,
22 Colorado as described and depicted in the SUA; and
23

24 WHEREAS, the SUA was issued to the County for the stated purpose of:

25
26 construction, operation, and maintenance responsibilities associated with
27 recreation road and trail resources in and around the Golden Horseshoe Area east
28 of Breckenridge, CO on National Forest System lands (including trailheads,
29 existing summer and winter roads, motorized trails (limited), and non-motorized
30 trails); and
31

32 WHEREAS, the SUA imposes certain duties and obligations on the County; and
33

34 WHEREAS, the County has determined that it is in its best interest to authorize the Town
35 to assist the County in the performance of certain of the County’s duties and obligations under
36 the SUA; and
37

38 WHEREAS, the County and Town have cooperatively funded the acquisition of over
39 5,000 acres of property to be held as public open space; and
40

41 WHEREAS, the County and Town are continuing to purchase open space properties
42 together; and
43

44 WHEREAS, the County and Town have agreed to jointly manage properties that both
45 have cooperated in purchasing according to their previous Intergovernmental Agreement dated
46 March 2, 2011, as amended (“**Joint Properties**”); and

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2 WHEREAS, the Town is qualified and capable of assisting the County in the
3 performance of certain of the County's duties and obligations under the SUA; and
4

5
6 WHEREAS, the Parties anticipate having the staff and financial resource sufficient to
7 allow them to assume the responsibilities set forth in this Agreement; and
8

9 WHEREAS, the Parties have agreed between themselves as to the way in which each of
10 the Parties will share in the performance of certain of the County's duties and obligations under
11 the SUA, all as more fully set forth in this Agreement; and
12

13 WHEREAS, the Parties have agreed between themselves as to the way in which each of
14 the Parties will share in the performance of certain duties and obligations regarding roads and
15 trails on Joint Properties, all as more fully set forth in this Agreement.
16

17 NOW, THEREFORE, for and in consideration of the mutual promises and covenants
18 contained herein, and intending to be legally bound, the Parties agree as follows:
19

20 1. Authority. This Agreement is entered into pursuant to the authority granted by Article
21 XIV, Section 18(2)(a) of the Colorado Constitution and Part 2 of Article 1 of Title 29, C.R.S.

22 2. Intent. It is the intent and purpose of this Agreement to establish a framework for the
23 Town and County to assist in the performance of the County's contractual obligation to the
24 Forest Service under the SUA to provide management, maintenance, and construction of
25 summer and winterized non-motorized trails and recreational roads within the Permit Area. The
26 Parties believe that their cooperative management and maintenance of the summer and winter
27 recreational resources located within the Permit Area will provide seamless management, and
28 therefore be to the mutual benefit of the Parties, their respective residents, and the many visitors
29 who use the Permit Area for recreational purposes each year. Because many Joint Properties are
30 within the Permit Area, and the Parties also desire to provide seamless management of all Joint
31 Properties, it is the further intent of this Agreement to define the management of recreational
32 roads and trails on Joint Properties. In the performance of their obligations under this
33 Agreement, the Parties will seek to implement the established Golden Horseshoe Management
34 Plan and the White River National Forest Travel Management Plan, as the same may be
35 amended from time to time throughout the Term of this Agreement.

36 3. Definitions.

37 A. In addition to the terms that are defined parenthetically in this Agreement, the
38 following terms have the following meanings, unless the context clearly requires otherwise:

Act: The Colorado Governmental Immunity Act, Part 1 of
Article 10 of Title 24, C.R.S., as amended from time to
time throughout the Term of this Agreement.

Authorized Representative: A person designated by a Party as having the authority to
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settle a controversy on behalf of such Party pursuant to Section 13 of this Agreement.

- Day: A calendar day, unless otherwise indicated.
- Defaulting Party: A Party alleged to be in default under this Agreement.
- NEPA: The National Environmental Policy Act, as amended from time to time throughout the Term of this Agreement, and all applicable administrative rules and regulations.
- Non-Defaulting Party: The Party asserting that the other Party is in default under this Agreement.
- Operations and Management (Operating) Plan: The plan required to be prepared and revised annually by the County under Section IIIC of the SUA.
- Permit Area: The real property located in Summit County, Colorado that is the subject of the SUA. As described in the SUA, the Permit Area “covers approximately 75 miles in Sections 15, 16, and 24 through 36, T.6 S., R.77 W., and Sections 2, 3, 4, 5, 8, 9, 10, and 16, T.7 S., R.77 W., 6th P.M., . . . as shown on the maps attached as Exhibit A and Exhibit B” to the SUA.
- Term: Both the initial term and all renewal terms of this Agreement as described in Section 4.
- TMP: The White River National Forest Travel Management Plan, as amended from time to time throughout the Term of this Agreement.
- Will or Will Not: Terms indicating a mandatory obligation to act or to refrain from acting, respectively, as described in this Agreement.

1
2 B. All of the defined terms in the SUA are incorporated by reference into this Agreement.

3
4 4. Term.

5
6 4.1 The initial term of this Agreement commences as of the Effective Date of this
7 Agreement and ends, subject to earlier termination as hereafter provided, on December 31, 2019.

8 4.2 On January 1, 2020, and on each subsequent January 1st, this Agreement will
9 automatically renew for successive terms of one year each until such time as either the Town or
10 the County give written notice of termination in accordance with the next sentence of this

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1 Section 4.2. Beginning October 1, 2020, either Party may terminate this Agreement, without
2 cause and without liability for breach, by giving the other Party written notice of termination
3 prior to October 1st any calendar year. Such notice must be given in the manner provided for in
4 Section 14. Upon the giving of timely notice of termination, this Agreement will terminate (and
5 will not be renewed) on the next December 31st following the giving of the notice of termination.

6 5. Agreement Not An Assignment of the SUA. In recognition of the fact that the SUA is
7 not assignable or transferable, nothing in this Agreement shall be interpreted as an assignment
8 of the SUA. Notwithstanding anything contained in this Agreement, the County will remain
9 contractually obligated to the Forest Service as provided in the SUA.

10 6. Agreement To Cooperate Regarding Certain County Obligations Under the SUA. The
11 Parties agree to cooperate regarding the County’s contractual obligations to the Forest Service
12 under the SUA with respect to the construction, operation, and maintenance of the Permit Area,
13 all as more fully set forth in this Agreement. All obligations of the SUA that are not agreed to be
14 jointly shared by the Parties in this Agreement shall remain the sole obligation of the County.
15 When assisting in the performance of the County’s contractual obligations to the Forest Service
16 as described in the SUA with respect to the construction, operation, and maintenance of the
17 Permit Area the Town shall be authorized to act on behalf of the County as provided herein.

18 7. Description of Work to be Shared by the Parties. Unless otherwise agreed by the
19 Parties and the Forest Service, the work to be shared by the Parties under this Agreement may
20 be generally described as follows:

21 A. The maintenance and management of all current and future non-motorized
22 recreational trails and roads on Joint Properties, and assisting with the maintenance and
23 management of all current and future nonmotorized recreational trails and roads in the Golden
24 Horseshoe and adjacent Intermix prescription as set forth in the SUA and amended over time,
25 including trailheads and portals.

26 B. Assisting with signage and removal of dead, fallen, or hazardous trees on motorized
27 single-track trails.

28 C. Identifying any proposed changes to the boundary of the Permit Area.

29 D. Pending NEPA, reviewing, envisioning, planning, and implementing new sustainable
30 trails as generally depicted on the maps attached as exhibits to the SUA.

31 E. Pending NEPA, reviewing, establishing winter non-motorized use of trails within the
32 Permit Area for a variety of user groups, including fat bikes, as generally depicted on the maps
33 attached as exhibits to the SUA.

34 F. Town will conduct winter grooming of trails with administrative use of snowmobile
35 with grooming attachment on trails and snowcat on roads as approved in Exhibit B of the SUA
36 and amended by mutual agreement over time.

1 G. Maintaining the recreational road network within the Permit Area and on Joint
2 Properties.

3 H. Implementing closures of non-system, user-created routes in accordance with the
4 TMP.

5 I. Funding and staffing to construct various community trail projects within the Permit
6 Area and on Joint Properties.

7 J. Additional land acquisitions to assist with the seamless management approach within
8 the Permit Area and on Joint Properties.

9 K. Long term management of the recreational road network and non-motorized trail
10 facilities in the Permit Area and on Joint Properties.

11 L. Enhancing recreational experience via trail etiquette education efforts and wayfinding
12 signage.

13 M. Providing consistent updates on project progress within the Permit Area and on Joint
14 Properties.

15 N. Completing vegetation and forest health management on an “as needed” basis to
16 maintain a safe, sustainable recreational travel network.

17 8. Operations and Management Plan.

18 8.1 By the date established in the SUA the Parties will jointly develop the Operating
19 Plan (“Ops Plan”) required in Section IIIC of the SUA. However, the County (as the SUA
20 holder) will submit the Ops Plan as required by the SUA. After the submission and approval of
21 the initial Ops Plan, the Parties will jointly prepare any required revisions to the Ops Plan. As
22 provided in this Section 8, from time to time throughout the Term of this Agreement the Parties
23 will agree between themselves as to how to implement the Ops Plan.

24 8.2 The Ops Plan will lay out a mutually agreed plan for the work required to be
25 performed by the Parties in the Permit Area, and such other work within the Permit Area as the
26 Parties may desire (even though not required under the terms of the SUA). The Parties anticipate
27 that the Ops Plan (both as originally approved and as revised and updated throughout the Term
28 of this Agreement), will cover the anticipated work for approximately a 5-year period.

29 8.3 The Ops Plan will be signed by the County, and will include, without limitation,
30 mutually acceptable plans for the construction, operation, and maintenance of the summer and
31 winterized non-motorized trails and recreational roads within the Permit Area.

32 8.4 The Ops Plan may be revised and updated at any time, subject to the approval of
33 both of the Parties and the Forest Service.

1 8.5 At least annually the Parties will meet and confer to discuss the Ops Plan and any
2 work anticipated on Joint Properties, and define the allocation of the required work and funding
3 between the Parties.

4 8.6 Unless otherwise agreed by the Parties, plans for work by either Town or County
5 under this Agreement will always include the following provisions:

6 A. Proposals for new trail construction or realignments must be presented to each Party
7 in writing with sufficient time for review and approval. Written approval and all necessary
8 permits shall be obtained prior to construction.

9 B. Proposals for mechanical grading, excavation or any other “heavy maintenance”
10 which may alter the character or function of trails or roads must be presented to each Party in
11 writing with sufficient time for review and approval. Written approval and all necessary permits
12 shall be obtained prior to construction.

13 C. Because there are trails on Joint Properties and within the Permit Area that are
14 suitable for use by bicycles, and bicycles may also be operated as a part of the Town’s trail
15 network, the Town’s indemnity obligation under Section 12.1 will apply to liability, claims, and
16 demands, on account of injury, loss, or damage, including, without limitation, claims arising
17 from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any
18 other loss of any kind whatsoever, arising out of the construction, maintenance, operation, or use
19 of all features constructed by the Town on the trails within the Permit Area that are designed for
20 use by riders of bicycles.

21 D. The Party responsible for providing construction and maintenance activities for a
22 particular project that is covered by the Ops Plan will provide: (i) appropriate training of
23 employees and others who will be responsible for the performance of such construction and
24 maintenance activities; (ii) regular on-site monitoring and observance of the performance of the
25 work for the project; and (iii) posting information and warning signs (as deemed necessary by
26 such Party) at appropriate locations in or near the site of the work.

27 E. It is anticipated that in the absence of an emergency requiring action by the Parties at
28 other times of the year, maintenance and construction activities will occur primarily during the
29 summer field season from May – November each year.

30 F. When working within the area that is subject to this Agreement, each of the Parties
31 will take appropriate steps to minimize the chance of the occurrence of an event relating to
32 hazardous materials.

33 8.7 Neither Party is required to track staff time and costs required in connection with
34 the work required under this Agreement.

35 8.8 In recognition of the fact that throughout the Term of this Agreement the Parties
36 anticipate that each of them will have different staffing and financial resources available to
37 implement projects, it is agreed that this Agreement does not require the Parties to share equally
38 in project implementation. Subject to Section 9, each Party retains the right from time to time to

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1 determine the extent to which it will participate in the implementation of work proposed under
2 this Agreement.

3 9. Financial Obligations Required To Implement Agreement.

4 9.1 The Parties will agree from time to time which Party will be responsible to
5 perform and pay for the work required to implement the Ops Plan or proposed on Joint
6 Properties. Subject to the Parties' obligations to jointly share certain expenses as described in
7 Section 8.8 , such Party will then be solely responsible for the performance of and the payment
8 for such work.

9 9.2 The Parties acknowledge that there will be times when one of the Parties may
10 provide more than 50% of the costs of the work under this Agreement. The Parties agree that the
11 allocation of the cost of the work will be determined on a project-by-project basis. Once a final
12 determination has been made as to the allocation of the costs and management responsibilities of
13 a particular project, the agreement with respect to the payment of the costs associated with such
14 particular project shall be confirmed in writing by both of the Parties.

15 9.3 The financial obligation of each of the Parties required to pay for its share of the
16 work to be performed is subject to annual appropriation by the governing body of such Party as
17 provided in Section 15 of this Agreement.

18 10. Amendments to the SUA. The County agrees that throughout the Term of this
19 Agreement it will not seek to amend the SUA without the prior approval of the Town.

20 11. Governmental Immunity. The Parties are each relying on, and do not waive or
21 intend to waive by any provision of this Agreement, the monetary limitations (presently
22 \$387,000 per person and \$1,093,000 per occurrence) or any other limitation, right, immunity,
23 defense or protection otherwise available to Town and the County, and their respective officers,
24 representatives, agents, and employees.

25 12. Mutual Indemnification.

26 12.1 Indemnification By Town. The Town will indemnify and defend the County, its
27 officers, employees, insurers, and self-insurance pool against all liability, claims, and demands,
28 on account of injury, loss, or damage, including, without limitation, claims arising from bodily
29 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any
30 kind whatsoever, arising out of or in any manner connected with this Agreement, to the extent
31 that such injury, loss, or damage is caused by:

32 A. the negligence or intentional wrongful act or omission of the Town, or any officer,
33 employee, representative or agent of the Town; or

34 B. the Town's breach of this Agreement,

35 except to the extent such liability, claim or demand arises through the negligence or intentional
36 wrongful act of the County, its officers, employees, or agents, or the County's breach of this
37 Agreement. To the extent indemnification is required under this Agreement, the Town agrees to

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1 investigate, handle, respond to, and to provide defense for and defend against, any such liability,
2 claims, or demands at its expense, and to bear all other costs and expenses related thereto,
3 including court costs and attorney fees.
4

5 12.2 Indemnification By County. The County will indemnify and defend the Town, its
6 officers, employees, insurers, and self-insurance pool against all liability, claims, and demands,
7 on account of injury, loss, or damage, including, without limitation, claims arising from bodily
8 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any
9 kind whatsoever, arising out of or in any manner connected with this Agreement, to the extent
10 that such injury, loss, or damage is caused by:

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

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

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

21 12.3 Indemnity Subject To Act. The obligation of a Party to indemnify and defend the
22 other Party pursuant to this Section 12 is expressly subject to any applicable limitation or
23 provision of the Act or any other law providing similar limitations or protections.

24 12.4 Indemnity For Worker's Compensation Claims.

25 A. The Town will indemnify and defend the County with respect to any claim,
26 damage, or loss arising out of any worker's compensation claim of any employee of the Town.

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

29 12.5 Survival. The obligation of a Party to indemnify and defend the other Party
30 pursuant to this Section 12 will survive the termination of this Agreement, and will continue to
31 be enforceable thereafter until such obligations are fully performed, subject to any applicable
32 statute of limitation or statute of repose.

33 13. Default; Resolution Of Disputes.

34 13.1 Default. A default will exist under this Agreement if any Party violates any
35 covenant, condition, or obligation required to be performed hereunder. If any Party fails to cure
36 such default within 20 business days after another Party gives written notice of the default to the
37 Defaulting Party, then, at the Non-Defaulting Party's option, the Non-Defaulting Party may
38 terminate this Agreement. In the event of a default not capable of being cured within 20 business

1 days, a Defaulting Party will not be in default hereunder if it commences curing the default
2 within 20 business days after receipt of written notice of default from the Non-Defaulting Party,
3 and thereafter cures such default with due diligence and in good faith. Notwithstanding any
4 Party's right to terminate this Agreement for an uncured default, this Agreement is subject to the
5 rights of any Party to invoke the remaining provisions of this Section 13.

6 13.2 Negotiation. Either Party may give the other Party written notice of any dispute
7 arising out of or related to this Agreement that is not resolved in the normal course of business.
8 The Parties will attempt in good faith to resolve any such dispute promptly by negotiations
9 between the Parties' Authorized Representatives. Within 15 business days after receipt of said
10 notice, Authorized Representatives will meet at a mutually acceptable time and place, and
11 thereafter as often as they reasonably deem necessary, to exchange relevant information and to
12 attempt to resolve the dispute. If the matter has not been resolved within 60 business days of the
13 notice of dispute, or if the Parties fail to initially meet within 15 business days, either Party to the
14 dispute may initiate mediation of the controversy as provided below.

15 13.3 Mediation. If the dispute has not been resolved by negotiation as provided above,
16 the Parties will endeavor to settle the dispute by mediation with a neutral third party. If the
17 Parties encounter difficulty in agreeing on a neutral third party, they may each appoint a neutral
18 third party and such third parties will appoint a neutral third party to mediate.

19 13.4 Arbitration. Any dispute arising out of or relating to this Agreement or the
20 breach, termination, or validity hereof, which has not been resolved by the methods set forth
21 above within 60 business days of the initiation of mediation, will be finally settled by binding
22 arbitration conducted expeditiously in accordance with the commercial arbitration rules of the
23 American Arbitration Association (or other rules as may be agreed to by the Parties) by a sole
24 arbitrator. The place of arbitration will be Breckenridge, Colorado. The arbitrator is not
25 empowered to award damages in excess of compensatory damages.

26 13.5 Provisional Remedies. The procedures specified in this Section 13 are the sole
27 and exclusive procedures for the resolution of disputes among the Parties arising out of or
28 relating to this Agreement; provided, however, that a Party may seek a preliminary injunction or
29 other provisional judicial relief if, in its judgment, such action is necessary to avoid irreparable
30 damage or to preserve the status quo. Despite such action, the Parties will continue to participate
31 in good faith in the procedures specified in this Section 13.

32 13.6 Performance To Continue. Each Party is required to continue to perform its
33 obligations under this Agreement pending final resolution of any dispute arising out of or
34 relating to this Agreement.

35 13.7 Extension Of Deadlines. All deadlines specified in this Section may be extended
36 by mutual agreement.

37 13.8 Costs. Each Party will pay its own costs with respect to negotiation and
38 mediation. The prevailing Party in any arbitration or provisional judicial relief is entitled to
39 reimbursement from the other Party for all reasonable costs and expenses, including attorney fees
40 in connection with such arbitration or provisional judicial relief.

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

4 If intended for Town to:
5 Open Space and Trails Manager
6 Town of Breckenridge
7 P.O. Box 168
8 Breckenridge, CO 80424
9 (970)547-3155

10
11 and
12 Town of Breckenridge
13 P.O. Box 168
14 150 Ski Hill Road
15 Breckenridge, Colorado 80424
16 Attn: Rick G. Holman, Town Manager
17 Telecopier number: (970)547-3104
18 Telephone number: (970)453-2251

19
20 with a copy in each case (which will not constitute notice) to:

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

30
31 If intended for County, to:
32 Open Space and Trails Director
33 P.O. Box 5660
34 Frisco, CO 80443
35 Telephone number: (970)668-4067

36
37 and
38 Board of County Commissioners
39 P.O. Box 68
40 Breckenridge, Colorado 80424
41 Attn: Scott Vargo, County Manager
42 Telephone number: (970)453-3401
43 Telecopier number: (970)453-3535

44
45 with a copy in each case (which will not constitute notice) to:

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1
2 Jeff Huntley, Esq.
3 Summit County Attorney
4 P.O. Box 68
5 Breckenridge, Colorado 80424
6 Telephone number: (970)453-3407
7 Telecopier number: (970)454-3535
8

9 Any notice delivered by mail in accordance with this Section 14 is deemed to have been duly
10 given and received on the third business day after the same is deposited in any post office or
11 postal box regularly maintained by the United States postal service. Any notice delivered by
12 telecopier in accordance with this Section 14 is deemed to have been duly given and received
13 upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone
14 and a copy of said notice is sent by certified mail, return receipt requested, on the same day to
15 that intended recipient. Any notice delivered by hand or commercial carrier is deemed to have
16 been duly given and received upon actual receipt. Either Party, by notice given as above, may
17 change the address to which future notices may be sent. E-mail is not a valid method for the
18 giving of notice under this Agreement.
19

20 15. Annual Appropriation.
21

22 15.1 Town Appropriation. Notwithstanding anything herein contained to the contrary,
23 the Town's obligations under this Agreement are expressly subject to an annual appropriation
24 being made by the Town Council of the Town of Breckenridge in an amount sufficient to allow
25 Town to perform its obligations under this Agreement. If sufficient funds are not so appropriated,
26 this Agreement may be terminated by either Party without penalty upon notice given in the
27 manner described in Section 14. The Town's obligations under this Agreement do not constitute
28 a general obligation indebtedness or multiple year direct or indirect debt or other financial
29 obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

30 15.2 County Appropriation. Notwithstanding anything herein contained to the contrary,
31 the County's obligations under this Agreement are expressly subject to an annual appropriation
32 being made by the Board of County Commissioners of Summit County, Colorado in an amount
33 sufficient to allow the County to perform its obligations under this Agreement. If sufficient funds
34 are not so appropriated, this Agreement may be terminated by either Party without penalty upon
35 notice given in the manner described in Section 14. The County's obligations under this
36 Agreement do not constitute a general obligation indebtedness or multiple year direct or indirect
37 debt or other financial obligation whatsoever within the meaning of the Constitution or laws of
38 the State of Colorado.

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

1 17. Waiver. The failure of either Party to exercise any of its rights under this
2 Agreement is not a waiver of those rights. A Party waives only those rights specified in writing
3 and signed by either Party waiving its rights.

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

7 19. Applicable Law. This Agreement is to be interpreted in all respects in accordance
8 with the laws of the State of Colorado.

9 20. Entire Agreement. This Agreement constitutes the entire agreement and
10 understanding between the Parties as to the subject matter of this Agreement, and supersedes
11 any prior agreement or understanding relating thereto.

12 21. Amendment. This Agreement may be modified or amended only by a duly
13 authorized written instrument executed by the Parties. No oral amendment or modification of
14 this Agreement is allowed.

15 22. Severability. If any of the provisions of this Agreement are declared by a final
16 non-appealable judgment court of competent jurisdiction to be invalid, illegal or unenforceable
17 in any respect, the validity, legality and enforceability of the remaining provisions of this
18 Agreement will not in any way be affected or impaired thereby.

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

21 24. Authority. The individuals executing this Agreement on behalf of each of the
22 Parties represent to the other Party that they have all requisite powers and authority to cause the
23 Party for whom they have signed to enter into this Agreement, and to bind such Party to fully
24 perform its obligations as set forth in this Agreement.

25 25. No Adverse Construction. Both Parties acknowledge having had the opportunity
26 to participate in the drafting of this Agreement. This Agreement is not to be construed against
27 either Party based upon authorship.

28 26. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the
29 Parties and their respective successor governing boards.

30 27. Approval By Governing Boards or Other Authority. In accordance with Section
31 29-1-203(1), C.R.S., this Agreement will not become effective unless and until it has been
32 approved by the governing bodies of both the Town and the County, or by such persons as has
33 the power to approve this Agreement on behalf of the Town and the County.

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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

Helen Cospolich, CMC,
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By:

Chair

ATTEST:

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

EXHIBIT "A"
TO
INTERGOVERNMENTAL AGREEMENT

County's Special Use Authorization

[TO BE ATTACHED]