

TOWN OF MOUNTAIN VILLAGE  
SPECIAL TOWN COUNCIL MEETING  
THURSDAY, AUGUST 13, 2020, 8.30 AM  
TO BE HELD REMOTELY VIA ZOOM WEBINAR  
[https://zoom.us/webinar/register/WN\\_Eg3zqonnRyebq3xCyIk75A](https://zoom.us/webinar/register/WN_Eg3zqonnRyebq3xCyIk75A)  
AGENDA

(see login details below)

	Time	Min	Presenter	Type	
	8:30				Call to Order
1.	8:30	30		Legal	Executive Session for the Purpose of a Personnel Matter Pursuant to C.R.S. Section 24-6-402((4)(f)(I))
2.	9:00	5			Public Comment on Non-Agenda Items
3.	9:05	5	Johnston	Action	Consent Agenda: All matters in the Consent Agenda are considered to be routine by the Town Council and will be enacted with a single vote. There will be no separate discussion of these items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately: a. Consideration of Approval of the July 9, 2020 Special Town Council Meeting Minutes b. Consideration of Approval of the July 16, 2020 Regular Town Council Meeting Minutes c. Consideration of Approval of the July 30, 2020 Special Town Council Meeting Minutes
4.	9:10	15	Mahoney Montgomery	Action	Consideration of an Amendment to the Amended and Restated Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility Between the Mountain Village and the Fire District
5.	9:25	10	Wise	Action	Consideration of Approval for the Hiring of a Recently Vacated Water Technician Position
6.	9:35	20	Haynes Adamson	Informational	Village Court Apartments (VCA) Monthly Update a. Suspension of Late Fee Direction
7.	9:55	15	Demas Kohin	Informational	Telluride Foundation Update
8.	10:10	15	Town Council	Informational	Council Boards and Commissions Updates : a. Telluride Tourism Board – Berry b. Colorado Flights Alliance – Gilbride c. Transportation & Parking – Benitez/Duprey d. Budget & Finance Committee – Gilbride/Duprey e. Gondola Committee – Caton/Berry f. Colorado Communities for Climate Action – Berry g. San Miguel Authority for Regional Transportation (SMART) – Caton/Prohaska h. Eco Action Partners – Berry/Prohaska i. Telluride Historical Museum – Prohaska j. Telluride Conference Center – Gilbride/Binder k. Alliance for Inclusion – Binder l. Green Team Committee – Berry/Prohaska m. Business Development Advisory Committee – Caton/Benitez n. Mayor's Update - Benitez
9.	10:25	5			Other Business
10	10:30				Adjourn

Please note that times are approximate and subject to change

You are invited to a Zoom webinar.  
When: Aug 13, 2020 08:30 AM Mountain Time (US and Canada)  
Topic: August 13, 2020 Special Town Council Meeting

Register in advance for this webinar:  
[https://zoom.us/webinar/register/WN\\_Eg3zqonnRyebq3xCyIk75A](https://zoom.us/webinar/register/WN_Eg3zqonnRyebq3xCyIk75A)

After registering, you will receive a confirmation email containing information about joining the webinar.

SJ

8/10/20

Public Comment Policy:

- The Town Council will take your comments during all virtual Town Council meetings through the zoom conference app for items proper to receive public comment via the written comment feature on zoom.
- Please do not comment until the presiding officer opens the agenda item to public comment. Public comments submitted outside of the proper time may not be considered.
- All those wishing to give public comment must identify their full name and affiliation, if any, to the Town of Mountain Village.
- Please keep your comments as brief and succinct as possible as they will be read aloud at the meeting. Please refrain from repeating what has already been said by others in the interest of time. You may simply state that you agree with a previous speaker's comments.
- Commenters shall refrain from personal attacks and maintain a civil tone while giving public comment.

**TOWN OF MOUNTAIN VILLAGE  
MINUTES OF THE JULY 9, 2020  
SPECIAL TOWN COUNCIL MEETING DRAFT**

**AGENDA ITEM 3a**

The meeting of the Town Council was called to order by Mayor Laila Benitez at 8:3 a.m. on Thursday, July 9, 2020. Due to the Town's Disaster Declaration of March 19, 2020 related to the COVID-19 virus, the meeting was held with virtual access provided through Zoom.

**Attendance:**

**The following Town Council members were present and acting:**

Laila Benitez, Mayor  
Dan Caton, Mayor Pro Tem  
Patrick Berry  
Pete Duprey  
Natalie Binder  
Marti Prohaska  
Jack Gilbride

**The following Town Council members were absent:**

Also in attendance were:

Kim Montgomery, Town Manager  
Susan Johnston, Town Clerk  
Christina Lambert, Senior Deputy Town Clerk  
Jim Mahoney, Assistant Town Attorney  
Chris Broady, Chief of Police  
Jamie Holmes, Director of Human Resources  
Kevin Swain, Director of Finance  
Julie Vergari, Chief Accountant  
Zoe Dohnal, Business Development and Sustainability Senior Manager  
Kathrine Warren, Public Information Specialist  
Michelle Haynes, Director of Planning & Development Services  
John Miller, Planner II  
Jim Loebe, Director of Transit & Recreation  
Jim Soukup, Chief Technology Officer  
Finn Kjome, Director of Public Works  
JD Wise, Assistant Director of Public Works  
Kate Burns, Controller  
Kathy Smith, Accounts Payable Specialist  
Lindsay Niehaus, Accounts Receivable Specialist  
Paul Wisor  
Sherry Reeder

**Consideration of Approval of a Letter of Support for Great Mountain Outdoors Act (2)**

Council member Patrick Berry presented. Council discussion ensued. On a **MOTION** by Dan Caton and seconded by Natalie Binder, Council voted unanimously to approve a letter of support for Great Mountain Outdoors Act.

**Consideration of a Recommendation to Bring Current Leave of Absence Employees Back to Work as of August 1, 2020 and to Continue a Hiring Freeze (3)**

Town Manager Kim Montgomery presented. Council discussion ensued. Director of Finance Kevin Swain proposed filling a finance position recently vacated by a transfer to the Human Resources Department. On a **MOTION** by Pete Duprey and seconded by Marti Prohaska, Council voted unanimously to bring current leave of absence employees back to work as of August 1, 2020 and to continue a hiring freeze but allow the Finance Department to fill the vacant Accounts Receivable position.

Jack Gilbride joined the meeting at 9:00 a.m.

**Business Development Advisory Committee (BDAC) Update (4)**

Business Development and Sustainability Senior Manager Zoe Dohnal presented. Council discussion ensued.

**a. Consideration of Approval for Additional 2020 Business Relief Funding**

Zoe Dohnal presented. Council discussion ensued. On a **MOTION** by Dan Caton and seconded by Jack Gilbride, Council voted unanimously to approve the additional 2020 business relief funding.

**Staff Reports: (5)**

**a. Technology and Broadband Services**

Chief Technology Officer Jim Soukup presented.

**Council Boards and Commissions Updates : (6)**

- a. Telluride Tourism Board – Berry**
- b. Colorado Flights Alliance – Gilbride**
- c. Transportation & Parking – Benitez/Duprey**
- d. Budget & Finance Committee – Gilbride/Duprey**
- e. Gondola Committee – Caton/Berry**
- f. Colorado Communities for Climate Action – Berry**
- g. San Miguel Authority for Regional Transportation (SMART) – Caton/Prohaska**
- h. Eco Action Partners – Berry/Prohaska**
- i. Telluride Historical Museum – Prohaska**
- j. Telluride Conference Center – Gilbride/Binder**
- k. Alliance for Inclusion – Binder**
- l. Green Team Committee – Berry/Prohaska**
- m. Business Development Advisory Committee – Caton/Benitez**
- n. Mayor’s Update - Benitez**

**Other Business: (7)**

Police Chief Chris Broady stated that additional signage has been added in the Core designating the Bike Dismount Zone. Marti Prohaska stated that she was proud of the way this Council has handled the COVID-19 crisis.

There being no further business, on a **MOTION** by Dan Caton and seconded by Jack Gilbride, Council voted unanimously to adjourn the meeting at 9:50 am.

Respectfully prepared and submitted by,

Susan Johnston  
Town Clerk

**TOWN OF MOUNTAIN VILLAGE  
MINUTES OF THE JULY 16, 2020  
REGULAR TOWN COUNCIL MEETING**

**Agenda Item 3b**

The meeting of the Town Council was called to order by Mayor Laila Benitez at 8:30 a.m. on Thursday, July 16, 2020. Due to the Town's Disaster Declaration of March 19, 2020 related to the COVID-19 virus, the meeting was held with virtual access provided through Zoom.

**Attendance:**

**The following Town Council members were present and acting:**

Laila Benitez, Mayor  
Dan Caton, Mayor Pro Tem  
Patrick Berry  
Pete Duprey  
Marti Prohaska  
Jack Gilbride  
Natalie Binder

**The following Town Council members were absent:**

Also in attendance were:

Kim Montgomery, Town Manager	Matthew Thomas
Susan Johnston, Town Clerk	Julia Caulfield
Christina Lambert, Senior Deputy Town Clerk	Chris Trospen
Jim Mahoney, Town Attorney	Cath Jett
Chris Broady, Chief of Police	Kenneth Maenpa
Jamie Holmes, Director of Human Resources	Jonathan Greenspan
Lindsay Niehaus, Human Resources Coordinator	Paul Wisor
Kevin Swain, Director of Finance	
Julie Vergari, Chief Accountant	
Zoe Dohnal, Business Development and Sustainability Senior Manager	
Kathrine Warren, Public Information Specialist	
Michelle Haynes, Director of Planning & Development Services	
John Miller, Senior Planner	
Matt Gonzales, Building Inspector	
Luke Adamson, VCA Manager	
Jim Loebe, Director of Transit & Recreation	
Jim Soukup, Chief Technology Officer	
Finn Kjome, Director of Public Works	
JD Wise, Assistant Director of Public Works	
Kate Burns, Controller	

**Executive Session for the Purpose of Receiving Legal Advice Pursuant to C.R.S. 24-6-402(4)(b), and for the Purpose of Negotiations Pursuant to C.R.S. 24-6-402(4)e (2)**

On a **MOTION** by Jack Gilbride and seconded by Natalie Binder, Council voted unanimously to enter into Executive Session for the purposes of receiving legal advice pursuant to C.R.S. 24-6-402(4)(b), and for the purpose of negotiations pursuant to C.R.S. 24-6-402(4)e (2) at 8:33 a.m.

Council returned to open session at 8:54 a.m.

**Public Comment on Non-Agenda Items (3)**

There was no public comment.

**Consent Agenda (4)**

**All matter in the Consent Agenda are considered to be routine by the Town Council and will be enacted with a single vote. There will be no separate discussion of these items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately:**

- a. **Consideration of Approval of the June 4, 2020 Special Town Council Meeting Minutes**
- b. **Consideration of Approval of the June 11, 2020 Special Town Council Meeting Minutes**
- c. **Consideration of Approval of the June 18, 2020 Regular Town Council Meeting Minutes**

Town Clerk Susan Johnston presented. On a **MOTION** by Jack Gilbride and seconded by Pete Duprey, Council voted unanimously to approve the Consent Agenda as presented.

**Consideration of an Ethics Commission Appointment: (5)**

- a. **One Regular Seat**

Susan Johnston presented stating that incumbent Angela Pashayan was interested in continuing to serve on the Board and was the only applicant. Council discussion ensued. On a **MOTION** by Dan Caton and seconded by Jack Gilbride, Council voted unanimously to appoint Angela Pashayan to the regular seat on the Ethics Commission for a two-year term.

**Finance: (6)**

Director of Finance Kevin Swain presented.

- a. **Presentation of the May 31, 2020 Business & Government Activity Report (BaGAR)**

Council discussion ensued.

- b. **COVID-19 Revenue Impact Modeling Update**

Council discussion ensued.

- c. **Presentation of the April 30, 2020 Financials**

Council discussion ensued. On a **MOTION** by Pete Duprey and seconded by Jack Gilbride, Council voted unanimously to approve the April 30, 2020 Financials as presented.

**Second Reading and Public Hearing on an Ordinance Amending Chapter 3.04, Sales Tax, of the Town of Mountain Village Municipal Code to Enable the Collection of Sales Tax from Remote Sales (7)**

Town Attorney Jim Mahoney presented. Council discussion ensued. On a **MOTION** by Pete Duprey and seconded by Jack Gilbride, Council voted 7-0, to approve an Ordinance amending Chapter 3.03, Sales Tax, of the Town of Mountain Village Municipal Code to enable the collection of sales tax from remote sales.

**Consideration of Approval of a Sales and Use Tax Software Agreement with the Colorado Department of Revenue for Collection of Remote Sales Tax (8)**

Jim Mahoney and Kevin Swain presented. Council discussion ensued. On a **MOTION** by Pete Duprey and seconded by Natalie Binder, Council voted unanimously to approve a Sales and Use Tax Software agreement with the Colorado Department of Revenue for collection of remote sales tax.

**First Reading and Setting of a Public Hearing of an Ordinance Regarding CDC Amendments to Chapter 17.7 Sections 17.7.2-17.7.21, Building Regulations, Adopting the 2018 Editions of the International Building Code, International Residential Code, International Energy Conservation**

**Code, International Mechanical Code, International Fuel Gas Code, International Property Maintenance Code, the 2018 International Plumbing Code Edition of the International Plumbing Code (as Adopted by the State with Local Exceptions), the 2020 National Electrical Code (as Adopted by the State with Local Exceptions) and the 2018 Edition of the International Fire Code (as Adopted by the Telluride Fire Protection District with Local Exceptions), and the 2018 Existing International Building Code Legislative (9)**

Director of Planning and Development Services and Building Inspector Drew Harrington presented. Council discussion ensued. On a **MOTION** by Dan Caton and seconded by Marti Prohaska, Council voted 7-0 to approve on first reading an Ordinance Regarding CDC Amendments to Chapter 17.7 Sections 17.7.2-17.7.21, Building Regulations, Adopting the 2018 Editions of the International Building Code, International Residential Code, International Energy Conservation Code, International Mechanical Code, International Fuel Gas Code, International Property Maintenance Code, the 2018 International Plumbing Code Edition of the International Plumbing Code (as Adopted by the State with Local Exceptions), the 2020 National Electrical Code (as Adopted by the State with Local Exceptions) and the 2018 Edition of the International Fire Code (as Adopted by the Telluride Fire Protection District with Local Exceptions), and the 2018 Existing International Building Code and to set the second reading, public hearing and final Council vote for August 20, 2020.

**Consideration of an Agreement Between Bruin Waste Management and the Town of Mountain Village for Residential Refuse Collection and Disposal Services and Residential Curbside Recycling Services (10)**

Director of Public Works Finn Kjome presented. Council discussion ensued. On a **MOTION** by Marti Prohaska and seconded by Jack Gilbride, Council voted unanimously to approve an agreement between Bruin Waste Management and the Town of Mountain Village for residential refuse collection and disposal services and residential curbside recycling services as presented.

**Staff Reports: (11)**

**a. Marketing and Business Development**

Director of Zoe Dohnal presented. Council discussion ensued.

**b. Town Manager**

Town Manager Kim Montgomery presented her report. Council discussion ensued.

**Village Court Apartments (VCA) Monthly Update (12)**

Michelle Haynes and VCA Manager Luke Adamson presented. Council discussion ensued.

**a. VCA Resident Satisfaction Survey Executive Summary**

Council discussion ensued. Council consensus was to conduct more frequent VCA resident surveys.

**Telluride Regional Airport Authority (TRAA) Bi-Annual Report (13)**

Airport Manager Kenny Maenpa presented the report. Council discussion ensued.

**Green Team 2nd Quarter Report (14)**

Board Chair Cath Jett presented. Council discussion ensued.

**Other Business: (15)**

Director of Human Resources updated Council on the progress of returning furloughed employees.

There being no further business, on a **MOTION** by Dan Caton and seconded by Jack Gilbride, Council voted unanimously to adjourn the meeting at 10:34a.m.

Respectfully prepared and submitted by,

Susan Johnston  
Town Clerk

**TOWN OF MOUNTAIN VILLAGE  
MINUTES OF THE JULY 30, 2020  
SPECIAL TOWN COUNCIL MEETING**

**Agenda Item 3c**

The meeting of the Town Council was called to order by Mayor Laila Benitez at 8:30 a.m. on Thursday, July 30, 2020. Due to the Town's Disaster Declaration of March 19, 2020 related to the COVID-19 virus, the meeting was held with virtual access provided through Zoom.

**Attendance:**

**The following Town Council members were present and acting:**

Laila Benitez, Mayor  
Dan Caton, Mayor Pro Tem  
Patrick Berry  
Pete Duprey  
Natalie Binder  
Marti Prohaska  
Jack Gilbride

**The following Town Council members were absent:**

Also in attendance were:

Kim Montgomery, Town Manager  
Susan Johnston, Town Clerk  
Christina Lambert, Senior Deputy Town Clerk  
Jim Mahoney, Assistant Town Attorney  
Chris Broady, Chief of Police  
Jaime Holmes, Director of Human Resources  
Julie Vergari, Chief Accountant  
Zoe Dohnal, Business Development and Sustainability Senior Manager  
Kathrine Warren, Public Information Specialist  
Michelle Haynes, Director of Planning & Development Services  
John Miller, Planner II  
Jim Loebe, Director of Transit & Recreation  
Jim Soukup, Chief Technology Officer  
Finn Kjome, Director of Public Works  
Lindsay Niehaus, Billing and Accounts Receivable Specialist  
Kate Burns, Controller  
JD Wise, Assistant Director of Public Works

On a **MOTION** by Dan Caton and seconded by Jack Gilbride Council voted unanimously to amend the Executive Session agenda to include a discussion of a personnel matter regarding the legal RFP.

**Executive Session for the Purpose of Receiving Legal Advice Pursuant to C.R.S. 24-6-402(4)(b), and for a Personnel Matter Under C.R.S. Section 24.6.402((4)(f)(I)).**

- a. **Legal Advice Regarding Potential County Ballot Measures**
- b. **Legal Advice Regarding Deed Restriction Options**
- c. **Discussion of a Personnel Matter**



On a **MOTION** by Patrick Berry and seconded by Jack Gilbride, Council voted unanimously to enter into Executive Session for the Purpose of Receiving Legal Advice Pursuant to C.R.S. 24-6-402(4)(b), and for the Purpose of Negotiations Pursuant to C.R.S. 24-6-402(4)e at 8:31 a.m.

Council returned to open session at 9:48 a.m.

**Consideration of Approval for the Rehire of the Planner I Position (3)**

Business Development and Sustainability Director presented. Council discussion ensued. On a **MOTION** by Dan Caton and seconded by Patrick Berry Council voted unanimously to approve for the rehire of the Planner I position.

**Other Business: (4)**

There being no further business, on a **MOTION** by Dan Caton and seconded by Patrick Berry, Council voted unanimously to adjourn the meeting at 9:58 a.m.

Respectfully prepared and submitted by,

Susan Johnston  
Town Clerk



**MEMORANDUM**

**Agenda Item #4**

To: Mayor and Town Councilors

From: James Mahoney

Date: August 11, 2020

Re: Second Amendment to Amended and Restated IGA Joint Facilities Agreement with the Telluride Fire Protection District (TFPD)

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**Background:** The TFPD originally owned real property in the same location as the existing Municipal/Fire Station and around 1999 entered into an Agreement with the Town and the Town’s predecessor in interest, the Mountain Village Metropolitan District in order to expand the existing fire house and construct a joint facility that you see now. That agreement was Amended and Restated in 2000 and outline the financial contributions of each party and how the building would be “owned” and used by each respective party. The Amended and Restated Agreement also provides for the option of the TFPD to reallocate the third floor office space to the TFPD through the payment of a fixed amount with a 5% annual escalator. TFPD exercised that option in September of 2013.

The First Amendment to the Amended and Restated Agreement recognized that TFPD exercised the option to reallocate the third floor, but also recognized that TFPD did not have a current need for the space and the Town did so it allowed the Town to continue to occupy the third floor and deferred the TFPD payment until September 1, 2020.

**Second Amendment Purpose:** There are two purposes of this proposed Second Amendment. The first is to take authorize the parties to take steps to condominiumize the property and transfer real fee title ownership in each portion of the building to each party. The initial structure of the Joint Facilities Agreement was done to accommodate financing that the TFPD needed to construct its portion; however, it never transferred true fee title ownership in the property to the Town but rather recognized an ownership interest. With the third floor payment due and transfer of ownership of that section back to TFPD both Town staff and the TFPD feel that it is an appropriate time to take actions to get true ownership in each party, which will include condo mapping of the facility and creating a condo declaration for the facility. The Second Amendment authorizes such actions to take place.

The second purpose is to further memorialize the transfer of the 3<sup>rd</sup> floor to TFPD to occur upon condominiumization of the facility, TFPD to make payment to the Town for the transfer and to allow the Town to continue to lease at no charge the 3<sup>rd</sup> floor (less one office) for one year after transfer.

TFPD’s legal counsel and director are in agreement with this Second Amendment and it will be considered at the next TFPD meeting.

**Proposed Motion:** I move to approve the Second Amendment to the Amended and Restated Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility.

PO Box 1902  
Telluride, Colorado 81435

970.708.5070  
jmahoney@telluriderlaw.com

**SECOND AMENDMENT TO THE AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT FOR THE CONSTRUCTION AND  
OWNERSHIP OF A JOINT SERVICE FACILITY BETWEEN MOUNTAIN VILLAGE  
AND FIRE DISTRICT**

This Second Amendment to the Amended and Restated Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility is made and entered into this \_\_ day of August 2020, by and between the Telluride Fire Protection District, a special district organized under the laws of the State of Colorado (the “Fire District”) and the Town of Mountain Village, Colorado, a home rule municipality and political subdivision of the State of Colorado (“Mountain Village”).

**RECITALS:**

- A. The Fire District owns fee title to the property located at 411 Mountain Village Blvd., Mountain Village, CO 81435 (the “Property”).
- B. The Fire District, the Mountain Village and the Mountain Village Metro District (now merged into the Mountain Village) entered into the Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility effective August 18, 1999 (the “Original Agreement”), which was amended and restated by the Amended and Restated Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility, effective September 27, 2000 (the “Amended and Restated Agreement”) and amended by the First Amendment to the Amended and Restated Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility (the “First Amendment”) The Amended and Restated Agreement and First Amendment are collectively referred to as the “Joint Service Facility Agreement”.
- C. Although the Fire District owns the fee title to the Property, the Joint Service Facility Agreement allocates ownership and use of the spaces on and within the facility constructed on the Property.
- D. In September of 2013 the Fire District exercised its option to reallocate the ownership and use of the third floor office space from the Mountain Village to the Fire District pursuant to the terms of the Amended and Restated Agreement which resulted in a payment of \$488,047.00 being due and payable by the Fire District to the Mountain Village in September of 2015 (the “Fire District Payment”). The First Amendment allowed for the District to defer making the Fire District Payment for up to five (5) years through September 1, 2020 without incurring the five percent (5%) annual increase (the “Deferral”).
- E. The Fire District desires to make the Fire District Payment upon approval of the Condo Mapping (as defined below) and transfer ownership of the third floor to the Fire District and occupy one of the offices on the third floor office space pursuant to the Amended and Restated Agreement and the First Amendment.
- F. The Mountain Village desires to continue to occupy the remainder of the third-floor office space for up to one year after transfer of the third floor to the Fire District which the Fire District pursuant to the terms of this Second Amendment. In exchange for the Deferral the Mountain Village’s continued occupancy of the third floor less the southwest corner office shall be without any lease payment requirements from one year.

G. As the Fire District is the fee title owner of the Property The parties desire to condominiumize the Property (the "Condo Mapping") in order to create separate units and common space in order to convey fee title of each unit owned pursuant to the Joint Service Facility Agreement to the respective party and to govern the use of the property going forward.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree to this Second Amendment as follows.

The following provision are hereby added to the Amended and Restated Agreement:

1. The Fire District shall make the Fire District Payment and the Mountain Village agrees to transfer its interest in the third-floor office space upon completion and recording of the Condo Mapping.
2. The Fire District agrees to lease to the Mountain Village the third floor office space less the office located on the south west corner of the third floor office space which the Fire District will begin to occupy conveyance to the Fire District for the period of one year from the date of recoding of the Condo Mapping.
3. The consideration for the lease to the Mountain Village shall be the deferred five percent annual increase of the Fire District Payment from September of 2015 through September of 2020 resulting in no rent payments to be made by the Mountain Village for the use of the third floor office space less the southwest corner office during the term of the lease. The parties shall enter into a lease agreement that addresses lease terms consistent with this Second Amendment and items such as allocation of maintenance, utility and other similar costs on a pro-rata basis.
4. The Fire District and the Mountain Village hereby agree to condominiumize the Property in order to enable the parties to each own fee title to the units as allocated pursuant to the Joint Service Facility Agreement and to govern the use of the property going forward. The parties agree to equally share in the costs associated with condominiumizing the Property and costs to transfer respective ownership interests in the property subject to the annual appropriations of each party.

**IN WITNESS WHEREFOR**, the parties have executed this Second Amendment on the date first written above.

TOWN OF MOUNTAIN VILLAGE, a home-rule municipality and political subdivision of the state of Colorado.

By: \_\_\_\_\_  
Laila Benitez, Mayor

Approved as to Form:

\_\_\_\_\_  
Jim Mahoney, Town Attorney

ATTEST:

By: \_\_\_\_\_  
Susan Johnston, Town Clerk

TELLURIDE FIRE PROTECTION DISTRICT, a  
Colorado special district.

By: \_\_\_\_\_  
Chris Broady, President

ATTEST:

By: \_\_\_\_\_  
Dan Tigar, Secretary

FIRST AMENDMENT TO THE  
AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP  
OF A JOINT SERVICE FACILITY

This First Amendment to the Amended and Restated Intergovernmental Agreement (this "Amendment") is made and entered into this 20<sup>th</sup> day of August, 2015, by and between Telluride Fire Protection District, a special district organized under the laws of the State of Colorado (the "Fire District") and the Town of Mountain Village, Colorado, a home rule municipal corporation organized under the laws of the State of Colorado (the "Mountain Village").

RECITALS

WHEREAS, the Fire District, the Mountain Village and the Mountain Village Metropolitan District (the "Metro District") (now merged into the Mountain Village) entered into the Intergovernmental Agreement for the Construction and ownership of a Joint Service Facility, effective August 18, 1999 (the "Original Agreement"); and

WHEREAS, the Fire District, the Metro District, and the Mountain Village entered into the Amended and Restated Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility, effective September 27, 2000 (the "Amended and Restated Agreement"); and

WHEREAS, the Amended and Restated Agreement in Article XII(C) provides for an option to the Fire District to reallocate the third floor of the Joint Facility. Article XII(C) specifically states:

"The Fire District shall have a continuing option to reallocate the third floor office space, currently allocated as an Exclusive Facility of Mountain Village, to an Exclusive Facility of the Fire District. Such option shall not be exercised prior to five years from the date of this Amendment, and only after providing at least two years prior written notification to Mountain Village. The governing bodies of the Joint Venturers shall hold a joint meeting the first week of September annually, to discuss operation of the Joint Facility, and any notice of the Fire District's exercise of it [sic] option shall be provided at such meeting. The first opportunity for Fire District to exercise its option to reallocate the third floor leased space shall occur in the September, 2003, joint meeting, with possession of transferring to Fire District in September, 2005. Upon taking possession of the third floor office space as an Exclusive Facility pursuant to exercising its option, the Fire District shall pay Mountain Village Two Hundred Thirty-Four Thousand Seven Hundred Fifty-Nine dollars (\$234,759.00), plus a five percent (5%) annual increase from the date of this Agreement until possession of the space is transferred to the Fire District.", and

WHEREAS, in September, 2013, the Fire District exercised its option to reallocate the third floor office space (in accordance with the above Article XII(C)) (the "Office Space"). As a result thereof and in accordance with Article XII(C), a payment of \$488,047.00 is due and payable from the Fire District to the Mountain Village in September, 2015 (the "Consideration"), and

WHEREAS, the Fire District does not have a current need to occupy the Office Space until the Telluride Medical Center is constructed, and

WHEREAS, the Mountain Village does currently occupy the Office Space and does have a need to continue to occupy the Office Space until such time as the remodel of the Mountain Village Shop is designed, priced and built to accommodate the Mountain Village staff currently housed in the Office Space, and

WHEREAS, the Mountain Village and the Fire District wish to accommodate each other's needs by amending the Amended and Restated Agreement to allow the Mountain Village to continue to occupy the Office Space for a stated period of time and to defer the payment of the Consideration by the Fire District until such time as the Fire District takes possession of the Office Space.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree to this First Amendment as follows.

1. Article XII(C) of the Amended and Restated Agreement is hereby deleted in its entirety and is restated as follows:

"Option to Reallocate Third Floor. The Fire District and the Mountain Village acknowledge and agree that the Fire District has exercised its option to reallocate the third floor Office Space as provided in the original Article XII(C) of the Amended and Restated Agreement. Notwithstanding the exercise of the option, the Mountain Village shall maintain possession of the Office Space free from the payment of any rent for a period of not less than three (3) years from September 1, 2015, nor more than five (5) years from said date. Payment of the Consideration from the Fire District to the Mountain Village shall be deferred so long as the Mountain Village occupies the Office Space. Upon vacation of the Office Space by the Mountain Village, which by the terms of this Agreement shall not be less than three (3) years, the Fire District shall immediately remit payment of the Consideration. At any time after the expiration of two years from September 1, 2015, either party may, on September 1<sup>st</sup> of the then current year provide written notice of termination of the Mountain Village's occupancy of the Office Space, whereupon such occupancy shall terminate twelve (12) months from the date of such written notice of termination. Upon the expiration of such twelve-month period, the Mountain Village shall vacate the Office Space, and the Fire District shall remit the Consideration to the Mountain Village. In no event shall the Mountain Village's occupancy and the Fire District's deferred Consideration payment extend beyond September 1, 2020."

2. Except as specifically amended in Paragraph 1 above, to the extent the same remain applicable, all other terms and conditions of the Amended and Restated Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

TOWN OF MOUNTAIN VILLAGE, a Colorado home rule municipality

By: *Daniel Jansen*  
Dan Jansen, Mayor

ATTEST:

By: *Jackie Kennefick*  
Jackie Kennefick, Town Clerk

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SAN MIGUEL )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of September, 20 15, by Dan Jansen, as Mayor, and Jackie Kennefick, as Town Clerk, of the Town of Mountain Village, a Colorado home rule municipality.

Witness my hand and official seal.  
My Commission expires: 9-28-2015

SEAL



*Susan L. Johnston*  
Notary Public

Signatures continued on next page.



TELLURIDE FIRE PROTECTION DISTRICT, a Colorado special district

By: *Laura Ellison*  
Laura Ellison, President

ATTEST:

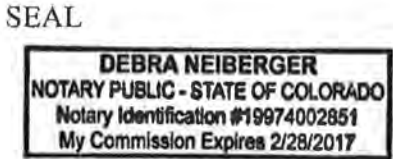
By: *Chris Broady*  
Chris Broady, Secretary

STATE OF COLORADO           )  
  ) ss.  
COUNTY OF SAN MIGUEL    )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of SEPTEMBER, 2015, by Laura Ellison, as President, and Chris Broady, as Secretary, of the Telluride Fire Protection District, a Colorado special district.

Witness my hand and official seal.  
My Commission expires: 2-28-2017

*Debra Neiberger*  
Notary Public



MVMD  
TFID  
Sja-

**AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP  
OF A JOINT SERVICE FACILITY**

**Between**

**TELLURIDE FIRE PROTECTION DISTRICT,  
TOWN OF MOUNTAIN VILLAGE, COLORADO,**

**AND**

**MOUNTAIN VILLAGE METROPOLITAN DISTRICT**

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## TABLE OF CONTENTS

<b>I.</b>	<b><u>RECITALS</u></b> .....	1
<b>II.</b>	<b><u>NAME</u></b> .....	3
<b>III.</b>	<b><u>LIMITED SCOPE</u></b> .....	3
<b>IV.</b>	<b><u>PURPOSE</u></b> .....	3
<b>V.</b>	<b><u>TERM</u></b> .....	3
<b>VI.</b>	<b><u>CAPITAL CONTRIBUTIONS</u></b> .....	3
	A. Construction Capital Contribution .....	3
	B. In-Kind Capital Contributions .....	4
	C. Total Capital Contributions .....	5
	D. Capital Account .....	5
<b>VII.</b>	<b><u>ADDITIONAL CAPITAL CONTRIBUTIONS</u></b> .....	5
	A. Call for Additional Capital .....	5
	B. Contributions for Non-Participating Joint Venturer .....	5
	C. Contribution of Participating Joint Venturer .....	6
	D. Insufficient Contributions .....	6
	E. Capital for Exclusive Use of Facilities .....	6
<b>VIII.</b>	<b><u>OWNERSHIP INTEREST AND ALLOCATION</u></b> .....	6
	A. Title to and Ownership in the Real Property .....	6
	B. Ownership of Personal Property .....	6
	C. Allocation of Revenue, Expenses, and Credits .....	6
<b>IX.</b>	<b><u>FEES AND DRAWS</u></b> .....	7
<b>X.</b>	<b><u>OPERATING DUTIES AND EXPENSES</u></b> .....	7
	A. Administration by Fire District .....	7
	B. Contract Administrator .....	7
	C. Administration and Operating Procedures .....	7
	D. Expenses of Operation and Administration .....	8
<b>XI.</b>	<b><u>MANAGEMENT OF THE JOINT VENTURE</u></b> .....	9
<b>XII.</b>	<b><u>USE BY JOINT VENTURERS</u></b> .....	9
	A. Individual Use of Common Facilities by Joint Venturers .....	9
	B. Exclusive Use of the Joint Facility .....	10
	C. Option to Reallocate Third Floor .....	10
	D. Right of First Refusal to Reallocate Second Floor .....	10
	E. Leased Areas .....	11
	F. Allocation of Areas .....	11
<b>XIII.</b>	<b><u>DISPOSITION OF JOINT VENTURE INTEREST</u></b> .....	11
<b>XIV.</b>	<b><u>BOOKS OF ACCOUNT</u></b> .....	12
<b>XV.</b>	<b><u>DISSOLUTION BY AGREEMENT; OPTION TO CONTINUE</u></b> .....	12
<b>XVI.</b>	<b><u>CONTRACT FOR DESIGN AND CONSTRUCTION OF THE JOINT FACILITY</u></b> .....	12
	A. Acquisition of Joint Facility .....	12
	B. Assignment, Assumption and Condominiumization .....	13
<b>XVII.</b>	<b><u>RIGHTS UPON DEFAULT</u></b> .....	13
<b>XVIII.</b>	<b><u>SUBLEASE AND ASSIGNMENT</u></b> .....	13
<b>XIX.</b>	<b><u>UTILITIES</u></b> .....	14
<b>XX.</b>	<b><u>PARKING</u></b> .....	14
<b>XXI.</b>	<b><u>GROUND LEASE</u></b> .....	14
<b>XXII.</b>	<b><u>RECORDING</u></b> .....	14
<b>XXIII.</b>	<b><u>AMENDMENT</u></b> .....	14

**TABLE OF CONTENTS (continued)**

**XXIV. MISCELLANEOUS** ..... 14

    A. Binding Effect..... 14

    B. Singular, Plural and Gender..... 14

    C. Notice ..... 14

    D. Governing Law ..... 15

    E. Authority of Signators..... 15

    F. Further Assurances..... 166

    G. Third-Party Beneficiary ..... 16

**SIGNATURE PAGES**..... 16, 17, 18

**EXHIBITS**

- EXHIBIT A     FIRE DISTRICT PROPERTY
- EXHIBIT B     ACTUAL CONSTRUCTION COST ALLOCATED TO PARTIES
- EXHIBIT C     YEAR 2000 OPERATING BUDGET
- EXHIBIT D     PLANS ALLOCATING JOINT FACILITY USE AREAS (REVISED)

**AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP  
OF A JOINT SERVICE FACILITY**

This Amended and Restated Agreement ("Agreement") is made effective as of the \_\_\_\_ day of September, 2000, between and among Telluride Fire Protection District, a special district organized under the laws of the State of Colorado ("Fire District"), Mountain Village Metropolitan District, a special district organized under the laws of the State of Colorado ("Metropolitan District"), and the Town of Mountain Village, Colorado, a home rule municipal corporation organized under the laws of the State of Colorado ("Mountain Village"), (all of which may hereinafter be singularly referred to as "Joint Venturer" or collectively as "Joint Venturers").

**I. RECITALS**

WHEREAS, the Fire District and Metropolitan District are Colorado special districts existing pursuant to Article 1, Title 32, CRS, and Mountain Village is a Colorado home rule municipality organized and existing pursuant to Article XX of the Colorado Constitution; and

WHEREAS, the Fire District owns a fire station located on real property ("Fire District Property") more particularly described on Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Fire District, Metropolitan District, and Mountain Village wished to construct a joint facility ("Joint Facility") by expanding the fire station building on the Fire District Property ("Joint Facility Property"); and

WHEREAS, Article XIV, Section 18(2)(a) of the Colorado Constitution and Part 2, Article 1, Title 29, CRS, encourage and authorize governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, the Fire District is willing and able to finance, and has financed the construction of the Joint Facility utilizing lease-purchase financing, and establish a Joint Venture with Mountain Village and the Metropolitan District to accomplish construction of the Joint Facility.

WHEREAS, the Joint Venturers entered into the Intergovernmental Agreement for the Construction and Ownership of a Joint Service Facility ("Joint Venture Agreement") effective August 18, 1999; and

WHEREAS, construction of the Joint Facility has been completed; and

WHEREAS, Sections VI., A. and C. and Exhibit C of the Joint Venture Agreement provided initial estimates of initial Construction Capital Contributions by dollar amount and percentage, which determine each Joint Venturer's percentage interest in the Joint Facility, and Sections VI., C. and D. call for adjustments in such percentage interests to reflect actual contributions; and

WHEREAS, the Joint Venturer's wish to revise their Construction Capital Contributions to reflect the actual costs to complete construction; and

WHEREAS, Article XVIII of the Joint Venture Agreement contemplated lease-purchase financing by the Fire District for construction of the Joint Facility, but did not contemplate lease-purchase financing by Mountain Village or the Metropolitan District of their Construction Capital Contributions due under Section VI.,A.; and

WHEREAS, lease-purchase of Mountain Village's or the Metropolitan District's Construction Capital Contribution would require the granting of an interest in their interest in the Joint Facility, which grant or conveyance is prohibited by Articles XIII and XVIII of the Agreement; and

WHEREAS, the Joint Venturers wish to amend and restate the Joint Venture Agreement to allow Mountain Village and the Metropolitan District to finance their capital accounts through lease-purchase financing; and

WHEREAS, the Joint Venturers seek acknowledgement by Wells Fargo Investments Services, Inc. (formerly known as Norwest Investment Services, Inc.), who has provided lease-purchase financing for construction of the Joint Facility, that such amendment and restatement is permissible under the agreement providing such lease-purchase construction financing; and

WHEREAS, the Joint Venturers wish to amend the Joint Venture Agreement to reflect Mountain Village's responsibility for the construction costs and exclusive use associated with the third floor office space, along with the terms under which the Fire District may obtain exclusive use of such space in exchange for repaying such construction cost; and

WHEREAS, the Joint Venturers wish to amend the Joint Venture Agreement to reflect terms under which the Fire District may obtain exclusive use of the second floor office space from the Metropolitan District by repaying construction costs associated with the second floor space currently allocated for the exclusive use of the Metropolitan District;

NOW, THEREFORE, in consideration of the terms and conditions of the Joint Venture Agreement and this Amended and Restated Agreement, the sufficiency of which is mutually acknowledged, the Joint Venturers amend and restate the Joint Venture Agreement in full, as follows:

## **II. NAME**

The name of this joint participation effort shall be Telluride Joint Service Facility ("Joint Venture").

## **III. LIMITED SCOPE**

The scope of the Joint Venture shall be limited to the development, construction, ownership, maintenance and operation of the Joint Facility. Neither this Agreement nor the actions of the Joint Venturers in exercising any right or responsibility, as provided for herein nor as may be reasonably implied by the terms of this Agreement, shall be interpreted or construed to apply to any purpose other than the purposes defined herein.

## **IV. PURPOSE**

The Joint Venture is created for the sole purpose of developing, constructing, owning and operating the Joint Facility located in Mountain Village, Colorado. The purpose of the Joint Venture shall be fulfilled in accordance with the terms of this Agreement and any other agreements as may be identified herein or by such additional agreements as may be mutually agreed upon by the Joint Venturers. Nothing contained in this Agreement shall be construed or interpreted as creating a partnership for any purpose. The Joint Venture may transact all lawful business necessary or incidental to the purposes set forth herein. Each Joint Venturer shall be free to engage in any other business or activity for its exclusive benefit free of any interest in such business or activity by any other Joint Venturer as a result of this Agreement.

## **V. TERM**

This Joint Venture and the terms of this Agreement shall continue indefinitely, subject to annual appropriations by the parties, until terminated as provided herein or as provided by law. Any Joint Venturer shall remain entitled to its respective share of the Joint Venture subject to the provisions of VI.C. upon dissolution as provided by Article XV. of this Agreement.

## **VI. CAPITAL CONTRIBUTIONS**

A. Construction Capital Contribution. Each Joint Venturer shall be responsible for and contribute capital and in-kind services for the cost associated with construction of the Joint Facility ("Construction Capital Contribution"). Each Joint Venturer's Construction Capital Contribution is based on the costs of constructing the portion of the Joint Facility to be allocated to that Joint Venturer as an Exclusive Facility under Sections XII., B. and C., herein. Additionally, the costs of constructing common areas as initially defined in Article XII. herein are allocated to each Joint Venturer equally. The Joint Venturers acknowledge that the total Construction Capital

Contributions for each Joint Venturer, and the costs associated with each area of construction as noted on Exhibit B attached hereto and incorporated herein, reflect the total actual cost of construction and the value of in-kind services provided to the Joint Facility, based on the value of providing such services to similar non-governmental facilities. Construction Capital Contributions have been paid to the Fire District from the Metropolitan District and Mountain Village and assigned by the Fire District to Wells Fargo. Such Construction Capital Contributions shall be and are hereby assigned by the Fire District to Wells Fargo Investment Services, Inc., the provider of the lease-purchase financing for the Joint Facility. The Construction Capital Contributions are as follows:

<u>Joint Venturer</u>	<u>Construction Capital Contribution</u>
Metropolitan District	\$ 446,858.00
Telluride Fire	\$1,533,313.00
Mountain Village	\$ 934,189.00

B. In-Kind Capital Contributions. The Parties have each contributed or expect to contribute certain in-kind services for construction of the Joint Facility. These in-kind services have significant value to the Joint Venture, but shall not be considered for purposes of determining Construction Capital Contribution, Percentage of Contribution, or ownership interest in the Joint Venture pursuant to Sections VI. A, C, and D. These in-kind contributions are as follows:

(1) Fire District Capital Contribution. The Fire District, in addition to contributing its share of the construction costs, shall contribute the Fire District Property and the existing building to be incorporated into the Joint Facility. The Fire District represents and warrants that it owns good and valid title to the properties free and clear of all liens and encumbrances, and that the properties are free of restrictions against the use of such properties for the purpose of the Joint Venture. Further, upon execution of this Agreement by all Parties, and in preparation for conveyance of the properties to the Joint Venture, the Fire District shall deliver to the other Joint Venturers a current commitment for title insurance policy in amounts equal to the agreed value of the property, the cost of which shall be borne by the Joint Venture. The District shall, by appropriate documentation, convey to the Joint Venture the existing building, and lease to the Joint Venture the Fire District Property on which the Joint Facility has been constructed. Such land lease shall be for a perpetual term so long as the Joint Venture remains in existence pursuant to this Agreement, but shall be subject to requirements and interests of Wells Fargo Investment Services, Inc. in the lease-purchase financing for the Joint Facility construction to be entered into by the Fire District.

(2) Mountain Village, in addition to contributing its share of construction costs, shall contribute all building permit fees for the Joint Facility.



(3) The Metropolitan District, in addition to contributing its share of construction costs, shall contribute all water and sewer tap fees, road impact fees and excavation permit fees.

C. Total Capital Contributions. Upon payment of the Construction Capital Contributions as defined in Section VI. A. above, the total capital contributions to the Joint Venture shall be in the following percentages:

<u>Joint Venturer</u>	<u>Percentage of Contribution</u>
Metropolitan District	14%
Telluride Fire	54%
Mountain Village	32%

D. Capital Account. The Administrator, as defined in Sections X., A. and B., shall establish and maintain a capital account for each Joint Venturer and shall credit such account from time to time with the capital contributions of each Joint Venturer, subject to depreciation as agreed upon by the Parties. The ownership interest of each Joint Venturer initially shall be as provided in Section VI., C., and at any subsequent point in time, shall be a percentage interest calculated by dividing the aggregate contributions of all of the Joint Venturers to the Joint Venture from the inception of the Joint Venture by the aggregate contributions of each Joint Venturer. The resulting quotient with respect to each Joint Venturer shall be the adjusted percentage interest of such Joint Venturer. Such adjusted percentage interest of each Joint Venturer shall supersede the percentage interest of such Joint Venturer as set forth in Section VI., C. Such percentages shall define the percent of ownership of each Joint Venturer in the Joint Facility. If any Exclusive Facility or leased area as provided in Sections XII., B. and C. below is leased by one Joint Venturer to another Joint Venturer, the percentage ownership of such lessor and lessee Joint Venturers shall be adjusted during the term of the lease.

## **VII. ADDITIONAL CAPITAL CONTRIBUTIONS**

A. Call for Additional Capital. If, by a majority vote as provided in Article XI, additional capital contributions are required to modify or expand the Joint Facility, which do not include expenses attributed to the Operating Shares or Individual Expenses, as discussed in Articles X, XII, and XIX, additional capital contributions may be called for by the Joint Venture in such amounts as determined by such majority vote.

B. Contributions for Non-Participating Joint Venturer. If any Joint Venturer is unwilling or unable to make any or all of its proportionate contribution as approved in Section VII., A. ("Non-Participating Joint Venturer"), then any other Joint Venturer who is able and willing to do so may, after ten (10) days written notice to the Non-Participating Joint Venturer, make a contribution in excess of its proportionate share in such amounts as it may determine.

C. Contribution of Participating Joint Venturer. Any Joint Venturer which makes a contribution to the Joint Venture pursuant to Sections A. or B. of this Article VII. ("Contributing Joint Venturer"), shall be credited for the contribution as additional capital of the Joint Venture. After such contributions are made, each Joint Venturer's capital account and percentage interest in the Joint Venture shall be adjusted and determined as provided in Section VI., D., above.

D. Insufficient Contributions. In the event the contributions are not sufficient to modify or expand the Joint Facility, the modification or expansion will not be made. All contributions will be returned to the Contributing Joint Venturer(s).

E. Capital for Exclusive Use of Facilities. To the extent that any facility is constructed or obtained for the exclusive use of any Joint Venturer, the capital required therefore shall be provided for entirely by that party. However, prior to and as a pre-condition to making such capital improvements at the Joint Facility, written consent of all Joint Venturers shall be obtained. The capital contribution of any Joint Venturer in the Joint Facility shall not be adjusted for any Exclusive Facilities constructed by any Joint Venturer after the date of this Agreement, and which is not contemplated by this Agreement.

## **VIII. OWNERSHIP INTEREST AND ALLOCATION**

A. Title to and Ownership in the Real Property. Subject to the lease-purchase financing contemplated by Article XXI and Section XVI., A., title to the Joint Facility, which shall be comprised of the existing building, the addition to and remodel of the existing building, and the lease of the Fire District Property, shall be in all of the Joint Venturers as tenants in common. Each Joint Venturer shall have an undivided ownership interest in the Joint Facility in accordance with the percentages set forth in Section VI., D., above. Title to the Fire District Property and the County Property shall remain with the Fire District, subject to the lease contemplated by Section VI., B. herein, and the ground lease and lease-purchase financing contemplated by Article XXI and Section XVI., A.

B. Ownership of Personal Property. All personal property that is utilized as part of the Joint Facility as provided by each entity shall continue to be that entity's personal property. Except as otherwise agreed, for personal property purchased after the effective date of this Agreement for the common benefit of the Joint Venturers, the cost of purchasing said property will be shared by the Parties entitled thereto to the extent there is a budget and appropriation covering the personal property. The purchased property shall be held by the Parties as tenants in common with undivided interest, in the same proportions as they hold interest in the Joint Venture. Each such item shall be assigned a depreciation schedule by the Administrator. Inventory and depreciation records shall thereafter be maintained by the Administrator.

C. Allocation of Revenue, Expenses, and Credits. To the extent any excess revenue, expense or credit is incurred by the Joint Venture as an entity, each Joint

Venturer shall obtain or bear such percentage of such excess revenue, expense, or credit in proportion to its use of the Joint Facility as determined by the Operating Share paid by the Joint Venturers. Any excess revenue, expense, or credit incurred by any Joint Venturer in exercising its rights to use and possess any part of the Joint Facility, which is not shared in common with all Joint Venturers, shall be considered an Individual Expense and obtained or borne only by such Joint Venturers participating therein, and shall not be shared by all Joint Venturers.

## **IX. FEES AND DRAWS**

No Joint Venturer shall be paid a fee or a draw unless authorized by unanimous vote of the Joint Venturers. If a fee or draw is authorized, it shall be an expense allocated to the Operating Shares subject to contributions in accordance with Article X below. No draws or distributions of Joint Venture capital funds shall be made unless authorized by unanimous vote of the Joint Venturers.

## **X. OPERATING DUTIES AND EXPENSES**

A. Administration by Fire District. The Fire District shall initially act and fulfill the responsibilities of "Administrator" of the Joint Facility, which shall include the authority and responsibility for all day to day management aspects of the Joint Facility including but not limited to: (1) administration and personnel management (personnel hired for administration of the Joint Facility shall be employees of the Administrator); (2) maintaining the books and records of the Joint Venture; (3) facilitating the maintenance and repair of the common areas of the Joint Facility; and (4) the undertaking of those tasks necessary for the efficient operation of the Joint Facility not otherwise performed by or which are the responsibility of any Joint Venturer in association with its exclusive use of the Joint Facility. No Joint Venturer may obligate or otherwise create a liability of the Joint Venture or any other Joint Venturer unless there is a budget and appropriation for the liability approved by a majority vote as provided in Article XI. or the individual Joint Venturer in question. The Fire District may, in its discretion, relieve itself of its duties as Administrator hereunder, after which any other Joint Venturer may undertake such duties upon receiving a majority of votes as provided in Article XI. If no other Joint Venturer is elected, the Joint Venturers shall contract with a third party to undertake the Administrator responsibilities as provided in Section X., B.

B. Contract Administrator. Should the Joint Venture elect to do so, by the unanimous vote of the Joint Venturers, it is authorized to contract for an independent administrator to manage the common areas of the Joint Facility, the duties of which shall include, without limitation, those enumerated in Section X., A. above, or fulfill the accounting obligations under Article XIV.

C. Administration and Operating Procedures. Administration and operating procedures for the Joint Facility, including hours of public operation, will be established by or pursuant to the direction of the authorized representatives of the Joint Venturers. In order to establish such procedures, the representatives of the Parties shall meet not later

than forty-five (45) days following the date of this Agreement, and so often thereafter as may be necessary to establish procedures prior to use and occupancy of the Joint Facility, including the preparation of an agreement regarding the allocation of parking spaces. The Joint Venturers may redefine the apportionment of exclusive and common areas. The administration and operating procedures shall be adopted by a majority vote as provided in Article XI. In no event shall procedures be established or implemented in any way that conflicts with this Agreement, the Constitution of the State of Colorado, or any provision of Colorado law governing the activities of any of the Parties to this Agreement.

D. Expenses of Operation and Administration.

(1) The annual budget for the Joint Facility shall be initially prepared by the Administrator, who shall submit a copy of the proposed budget to the representatives of each Joint Venturer for review and preliminary approval. Subsequent to such submittal and prior to the adoption of a budget for the Joint Facility by the Administrator, a majority vote pursuant to Article XI. must approve the budget. Each party must indicate its agreement to the budget by appropriating sufficient funds for their respective pro rata share of the annual operating budget ("Operating Share"). Each party's Operating Share is determined by the percentage of area of the Joint Facility occupied by such party regardless of whether the area is an Exclusive Facility or a leased Exclusive Facility, but exclusive of Individual Expenses associated with Exclusive Facilities as provided in Section XII., B. However, the expenses associated with common areas shall be shared equally between the three Parties in determining each Party's Operating Share. The budget shall include, among other things, the amount to be paid to the Administrator for management and administrative services to be provided during the ensuing fiscal year ("Administrative Fee"). The Administrator, if a Joint Venturer, may elect to receive a credit against its Operating Share in an amount not to exceed the Administration Fee. A copy of the proposed year 2000 annual operating budget is attached hereto and incorporated herein as Exhibit C.

(2) The Parties shall pay to the Administrator their respective Operating Share (which includes their portion of the Administrative Fee unless taken as a credit by the Administrator) in a manner and at such times as determined by the Parties in accordance with the provisions of Section X., C. above, or as approved at the time of approval of the annual budget.

(3) If any Joint Venturer is unwilling or unable to pay any or all of its annual Operating Share ("Non-Paying Joint Venturer") then any other Joint Venturer who is able and willing to do so may, after ten (10) days written notice to the Non-Paying Joint Venturer, pay a part or all of the deficiency. Pursuant to Section VI., D., the capital contribution of the Joint Venturer paying the deficiency shall be increased with a corresponding decrease in the capital contribution of the non-paying Joint Venturer by the amount of the deficiency paid by the Joint Venturer(s) paying the deficiency. Unless otherwise agreed by

the other Joint Venturers, any Non-Paying Joint Venturer shall not use the common areas of the Joint Facility during the fiscal year in which its Operating Share is not paid .

(4) The expenses of insurance coverage for all equipment and improvements on the property shall be included in the annual operating budget of the Joint Facility. The Administrator shall use reasonable efforts to obtain and maintain insurance coverage for replacement value, subject to a deductible amount, for all equipment purchased for the furtherance of the Joint Venture, while the Parties are operating under the terms of this Agreement, and shall use reasonable efforts to obtain and maintain liability insurance coverage in accordance with limitations on judgment as shall be established from time to time in the Colorado Governmental Immunity Act, Colo. Rev. Stat. § 24-10-114, et seq., but in no event with limits less than one hundred fifty thousand dollars (\$150,000.00) for any injury to one (1) person in a single occurrence; and six hundred thousand dollars (\$600,000.00) for injury to two (2) or more persons in any single occurrence (except that in such instance no person may recover more than one hundred fifty thousand dollars (\$150,000.00)).

## **XI. MANAGEMENT OF THE JOINT VENTURE**

For purposes of management decisions relating to the operation and existence of the Joint Venture and the Joint Facility, the Fire District will be entitled to one (1) vote and Mountain Village and the Metropolitan District will each be entitled to one-half (1/2) vote. Unless otherwise provided for herein, all management decisions shall be by a majority vote. The Joint Venture shall not be permitted to interfere with the use of each Joint Venturer provided in Article XII below.

## **XII. USE BY JOINT VENTURERS**

A. Individual Use of Common Facilities by Joint Venturers. Each Joint Venturer shall be entitled to use the common areas of the Joint Facility as determined by the Parties in accordance with the procedures set forth in Section X., C. herein. To the extent the use of the common areas of the Joint Facility by any Joint Venturer coincides with the use of the Joint Facility by any other Joint Venturer, where simultaneous activity is impractical or undesirable, the entities requiring such use shall mutually agree upon a schedule of use for the Joint Facility. If no agreement can be reached in the event of potential conflicting usages, then such schedule of usages shall be set by private arbitration by one (1) qualified arbitrator selected by mutual agreement or in the event agreement cannot be reached as to one (1) arbitrator, each party involved in the usage conflict shall select a qualified arbitrator and said arbitrators shall select an arbitrator, in which case the majority decision shall be binding upon the Parties. Unless otherwise agreed and so long as the annual administrative and Operating Share have been paid, each Joint Venturer is entitled to equal access to the common areas of the Joint Facility.

B. Exclusive Use of the Joint Facility. Each Joint Venturer shall be entitled to make exclusive use of those portions of the Joint Facility that are provided for use solely by the respective Joint Venturer ("Exclusive Facility"), and shall be solely responsible for all associated Individual Expenses, including the maintenance, upkeep and repair, and shall be entitled to the revenues derived from such Exclusive Facility. Such Joint Venturer shall maintain such Exclusive Facility in an operating and aesthetic standard substantially equivalent to the Joint Facility as newly constructed, subject to normal wear and tear. No Joint Venturer may use or otherwise impact any other Joint Venturer's Exclusive Facility.

C. Option to Reallocate Third Floor. The Fire District shall have a continuing option to reallocate the third floor office space, currently allocated as an Exclusive Facility of Mountain Village, to an Exclusive Facility of the Fire District. Such option shall not be exercised prior to five years from the date of this Amendment, and only after providing at least two years prior written notification to Mountain Village. The governing bodies of the Joint Venturers shall hold a joint meeting the first week of September annually, to discuss operation of the Joint Facility, and any notice of the Fire District's exercise of its option shall be provided at such meeting. The first opportunity for Fire District to exercise its option to reallocate the third floor leased space shall occur in the September, 2003, joint meeting, with possession transferring to Fire District in September, 2005. Upon taking possession of the third floor office space as an Exclusive Facility pursuant to exercising its option, the Fire District shall pay Mountain Village Two Hundred Thirty-Four Thousand Seven Hundred Fifty-Nine dollars (\$234,759.00), plus a five percent (5%) annual increase from the date of this Agreement until possession of the space is transferred to the Fire District.

D. Right of First Refusal to Reallocate Second Floor. The Town, followed by the Fire District, shall have a continuing right of first refusal to reallocate the second floor office space, currently allocated as an Exclusive Facility of Metropolitan District, to an Exclusive Facility of the Town or the Fire District. Should the Metropolitan District wish to reallocate or lease its Exclusive Facility second floor office space to any party other than the Town, or sell its interest in the Joint Facility, it shall give written notice to the Town and the Fire District of such desire. The Metropolitan District shall also give the Town and the Fire District written notice of any bona fide offer to reallocate or lease its second floor office space, or to buy its interest in the Joint Facility. Within ninety days of receipt of such notice, the Town may exercise its right of first refusal by providing the Metropolitan District of written notice, and possession of the space shall transfer to the Town within six months of when notice is given by the Town to the Metropolitan District of the Town's exercise of its right of refusal. If the Town fails to exercise its right of first refusal within ninety days of receipt of such notice, the Fire District shall have an additional thirty days to exercise its right of first refusal and possession of the space shall transfer to the Fire District within six months of when notice is given by the Fire District to the Metropolitan District of the Fire District's exercise of its right of refusal. Failure of the Town or the Fire District to exercise its continuing right of first refusal shall not terminate the right if the Metropolitan District fails to complete the transaction for which notice was given. To exercise their right of first refusal, the Town or the Fire District

shall pay the Metropolitan District, upon taking possession of the space, the lesser of the amount of the bona fide offer received by the Metropolitan District; or Two Hundred Thirty-Four Thousand Seven Hundred Fifty-Nine dollars (\$234,759.00), plus a five percent (5%) annual increase from the date of this Agreement until possession of the space is transferred to the Town or the Fire District.

E. Leased Areas. The Exclusive Facility of any Joint Venturer may be leased to any other Joint Venturer, for uses consistent with the uses allowed by this Agreement. The areas currently designated as the fitness center and conference room, including the lunchroom and kitchen area shall be deemed Exclusive Facilities of the Fire District for purposes of allocating construction costs and percentage of ownership of the Joint Facility. The Fire District shall retain the right to rescind the leases of such facilities upon one-hundred twenty (120) days notice if needed for office space or other exclusive use by the Fire District. Mountain Village and the Metropolitan District agree to each pay one-half of the tenant finish costs of the conference room, including the lunchroom and kitchen area. Operating Expenses for the fitness center and conference room leased facilities shall be split equally between the Fire District, Metropolitan District and Mountain Village. Should the Fire District rescind the lease of these leased facilities prior to completion of ten years from the occupancy of the space, it shall reimburse Mountain Village and the Metropolitan District for their tenant finish costs, as reflected on Exhibit B, pro-rated by the number of years occupied by Mountain Village or the Metropolitan District. The Fire District shall then assume sole responsibility for the Operating Expenses of the facilities for which the lease was terminated, and the former lease area shall become an Exclusive Facility of the Fire District for purpose of allocating the Fire District's Operating Share.

F. Allocation of Areas. The allocation of Exclusive Facilities, Common Areas, and leased Exclusive Facilities at the time of the execution of this Agreement is depicted on Exhibit D attached hereto and incorporated herein. Exhibit D shall be modified as the allocation of such areas is changed pursuant to the applicable terms of this Agreement.

### **XIII. DISPOSITION OF JOINT VENTURE INTEREST**

No Joint Venturer may sell assign, transfer, convey, give, grant a security interest in, or otherwise dispose of its interest in the Joint Venture without the prior written consent of all of the Joint Venturers, and otherwise in accordance with the provisions of this Agreement. However, in the event any Joint Venturer receives a bona fide offer to purchase its interest in the Joint Venture from a third party, upon written notice to the other Joint Venturers of the terms of said offer (such notice must include provision of a copy of said offer), the remaining Joint Venturers shall have the exclusive right, for the thirty (30) day period next succeeding the date of such notice to tender a written offer and to purchase said Joint Venturer's interest, upon terms identical to that bona fide third party offer (closing of said transaction need not necessarily be consummated within said thirty (30) days). Should no offer "upon terms identical to that bona fide third Party offer" be tendered within that thirty (30) day period, said Joint Venturer may then sell its

interest in accord with that same bona fide offer. No transfer of interest may occur which is contrary to the terms of the lease-purchase agreement to be used to finance the Joint Facility, or which will jeopardize the tax exempt status of the lease-purchase transaction. To the extent necessary to obtain lease-purchase financing for their Construction Capital Contributions required under Section VI.A., Mountain Village and the Metropolitan District may grant a leasehold interest, not to exceed fifteen (15) years, in their interest in the Joint Venture and Joint Facility, so long as any entity occupying the Joint Facility under such leasehold interest complies with this Agreement and any applicable land use requirements, and does not interfere with the use of the Joint Facility by other Joint Venturers.

#### **XIV. BOOKS OF ACCOUNT**

A separate accounting shall be kept of all transactions of the Joint Venture and each Joint Venturer shall cause to be entered on the books of the Joint Venture a true accounting of all its dealings, receipts, and expenditures for and on account of the Joint Venture. The accounting records required by this Article shall be kept in accordance with generally accepted governmental accounting principals and shall be open for inspection by the Joint Venturers or their representatives and agents at all reasonable times and subject to an annual independent audit. All monies received by the Joint Venture shall be deposited into and withdrawn from the Joint Venture account. Quarterly summaries of the Joint Venture's activities shall be provided to each Joint Venturer by the tenth (10th) day following the end of the quarter. At the end of each calendar year, a complete statement of the Joint Venture shall be compiled and an accounting between the Joint Venturers shall be completed.

#### **XV. DISSOLUTION BY AGREEMENT; OPTION TO CONTINUE**

The Joint Venture may be dissolved at any time upon the unanimous agreement of the Joint Venturers, or otherwise by operation of law, in which event the affairs of the Joint Venture shall be liquidated under the supervision of the Joint Venturers and the assets of the Joint Venture distributed in accordance with the rights of creditors and of the Joint Venturers as provided in the Uniform Partnership Law then in effect in the State of Colorado. Upon such dissolution, however, any Joint Venturer, if it desires to continue the operations of the Joint Facility, shall have the right to do so using the name of the Joint Facility upon the payment to the Joint Venturers seeking to withdraw from the Joint Venture the respective value of their shares of the Joint Venture, being amounts equal to the sum of each withdrawing Joint Venturer's net capital account at the time of such election. The terms of payments shall be cash, upon election to continue the operations, or as agreed upon among the Joint Venturers.

#### **XVI. CONTRACT FOR DESIGN AND CONSTRUCTION OF THE JOINT FACILITY**

A. Acquisition of Joint Facility. In compliance with the Joint Venture Agreement, the Fire District has obtained lease-purchase financing for construction of the



Joint Facility pursuant to the Lease and Purchase Option Agreement, Ground Lease, and related documents dated as of September 28, 1999, with Wells Fargo Investment Services, Inc. The Fire District shall be solely responsible for the monthly lease-purchase payment, subject to Construction Capital Contributions required pursuant to Section VI., A. The Joint Facility has been constructed substantially in accordance with the Site and Floor Plans, sheets LO1 through LO5, prepared by Calvin L. Wilbourne Telluride Architects, revision 04/14/99 ("Joint Facility Plans") (such plans are on file with the Administrator), and in compliance with the Joint Venture Agreement. The Fire District has complied with all requirements of Colorado law applicable to construction of a public building of the nature of the Joint Facility.

B. Assignment, Assumption and Condominiumization. The Fire District has included in the documents providing for the lease-purchase financing that should the Fire District fail to renew or otherwise terminate the lease-purchase financing prior to purchase of the Joint Facility, the Fire District may assign, and Mountain Village and the Metropolitan District, at their option, may assume the Fire District's rights and obligations under the lease-purchase documents, or in the alternative that the Joint Facility shall be divided by condominiumization and the areas for which full payment has been made and which are occupied by Mountain Village and the Metropolitan District shall be conveyed to those entities.

#### **XVII. RIGHTS UPON DEFAULT**

This Agreement may be enforced in law or in equity, including a suit for specific performance and/or for damages. Should any Joint Venturer breach any of the terms of this Agreement, any or all of the breaching Joint Venturers may obtain a judgment against the breaching Joint Venturer to remedy such breach. The rights upon breach, as outlined above, shall be supplemental to those procedures set forth for resolving disputes in this Agreement.

#### **XVIII. SUBLEASE AND ASSIGNMENT**

No Joint Venturer may lease or sublease the areas occupied by such Party hereunder, nor shall Mountain Village's first floor Exclusive Facility area be occupied by other than the Mountain Village Police Department, without express written consent of the other Joint Venturers. No party may assign their rights under this Agreement without the written consent of the other Joint Venturers. Notwithstanding the foregoing, the parties hereto specifically acknowledge the interests of Wells Fargo Investment Services in and to the Joint Facility pursuant to the lease-purchase financing documents between the Fire District and Wells Fargo and between the Metro District and Wells Fargo. To the extent necessary to obtain lease-purchase financing for their Construction Capital Contributions required under Section VI.A., Mountain Village and the Metropolitan District may grant a leasehold interest, not to exceed fifteen (15) years, in their interest in the Joint Venture and Joint Facility, so long as any entity occupying the Joint Facility under such leasehold interest complies with this Agreement and any applicable land use

requirements, and does not interfere with the use of the Joint Facility by other Joint Venturers.

#### **XIX. UTILITIES**

The parties shall be separately liable for utility expenses, as Individual Expenses, for Exclusive Facilities and leased Exclusive Facilities. Meters shall be installed for Exclusive Facilities.

#### **XX. PARKING**

Use of the property's parking facilities shall be in accordance with the parking agreement executed by the parties, which shall be created under the provision of Section X.C. above.

#### **XXI. GROUND LEASE**

The Parties recognize that to secure lease-purchase financing it was necessary to grant an underlying ground lease to Wells Fargo Investment Services, Inc. dated as of September 28, 1999

#### **XXII. RECORDING**

This Agreement shall be recorded in the real property records of the Clerk and Recorder of San Miguel County.

#### **XXIII. AMENDMENT**

This Agreement is the entire agreement of the Parties and may not be amended except by a writing referencing this Agreement and signed by all Joint Venturers. All prior discussions and understandings of the respective Joint Venturers pertaining to the subject matter of this Agreement are hereby merged into this Agreement.

#### **XXIV. MISCELLANEOUS**

A. Binding Effect. This Agreement shall be binding upon the Joint Venturers and their successors in interest.

B. Singular, Plural and Gender. In the application of this Agreement to the Joint Venturers, the context of this Agreement shall be construed so that the singular may be plural and vice versa, as may be appropriate, and the gender of any pronoun shall be revised as may be appropriate.

C. Notice. Any notice required by this Agreement shall be in writing. If such notice is hand-delivered or personally served, it shall be effective immediately upon such

delivery or service. If given by mail, it shall be certified with return receipt requested and addressed to the following addresses:

Telluride Fire Protection District  
P.O. Box 1645  
131 West Cascade Avenue  
Telluride, Colorado 81435

Mountain Village Metropolitan District  
113 Lost Creek Lane, Suite A  
Mountain Village, Colorado 81435

Town of Mountain Village  
113 Lost Creek Lane, Suite A  
Mountain Village, Colorado 81435

With copies to general counsel for each Joint Venturer:

J. David Reed  
P.O. Box 196  
Montrose, Colorado 81402-0196  
**General counsel for the Town of Mountain Village and Mountain Village  
Metropolitan District**

Robert G. Cole  
Collins Cockrel & Cole,  
a professional corporation  
390 Union Boulevard  
Suite 400  
Denver, Colorado 80228  
**General counsel for the Telluride Fire Protection District**

Notice given by mail shall be effective three (3) days after it is deposited in a United States mail depository with sufficient postage for delivery, and correctly addressed.

D. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be interpreted and construed in accordance with the laws of the State of Colorado.

E. Authority of Signators. The Joint Venturers represent that the individuals signing this Agreement on behalf of the respective Joint Venturers possess full power and authority from their respective governing boards in compliance with the State of Colorado.



F. Further Assurances. Each Joint Venturer agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

G. Third-Party Beneficiary. Wells Fargo Investment Services, Inc., as provider of the lease-purchase financing for the Joint Facility, shall be a third-party beneficiary hereof, so long as it is not in default of its obligations under the lease-purchase financing documents.

IN WITNESS WHEREOF, Parties have executed this Lease on the date first written above.

**TOWN OF MOUNTAIN VILLAGE**

By: \_\_\_\_\_  
William A. Hanley III, Mayor

ATTEST:

By: \_\_\_\_\_  
Linda Check,  
Town Clerk

STATE OF COLORADO            )  
  ) ss  
COUNTY OF SAN MIGUEL        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by William A. Hanley III as Mayor and Linda Check as Town Clerk, Town of Mountain Village, Colorado.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_



MOUNTAIN VILLAGE METROPOLITAN DISTRICT

By: [Signature]  
A.J. Wells, President

ATTEST:

By: [Signature]  
David C. Flatt,  
Secretary

STATE OF COLORADO )  
 ) ss  
COUNTY OF SAN MIGUEL )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of September, 2000, by A.J. Wells as President and David C. Flatt as Secretary of Mountain Village Metropolitan District.

Witness my hand and official seal.

[Signature]  
Notary Public

My Commission expires: 03-15-2003

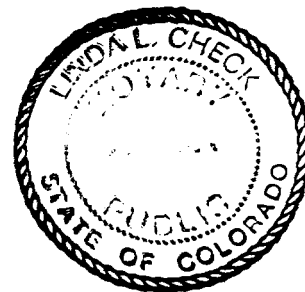


EXHIBIT A  
FIRE DISTRICT PROPERTY



EXHIBIT B  
ACTUAL CONSTRUCTION COST  
ALLOCATED TO PARTIES

EXHIBIT C  
YEAR 2000  
OPERATING BUDGET

EXHIBIT D  
PLANS ALLOCATING  
JOINT FACILITY USE AREAS  
(REVISED)

EXHIBIT A

FIRE DISTRICT PROPERTY

Lot 160R, Town of Mountain Village, according to the plat filed in the office of the Clerk and Recorder in Plat Book 1 at page 2710. County of San Miguel, State of Colorado.

**EXHIBIT B  
ACTUAL CONSTRUCTION COST  
ALLOCATED TO PARTIES**

**Development Costs**

Net construction period interest and Financing costs	150,111
Architectural	203,680
<b>Total Development costs</b>	<b>353,791</b>
<b>Construction</b>	<b>2,580,582</b>
<b>Total Actual Costs</b>	<b>\$ 2,914,373</b>

**Net const period interest and Financing costs**

Interest cost	123,867
less interest earnings from construction funds	(35,756)
Points 2% on 2.6 millions	52,000
Bond Attorney fees	10,000
	<b>150,111</b>

Projected Construction Cost	2,560,582
less: allowance-remodel exist garage space	(81,690)
<b>Net projected construction costs</b>	<b>2,478,892</b>

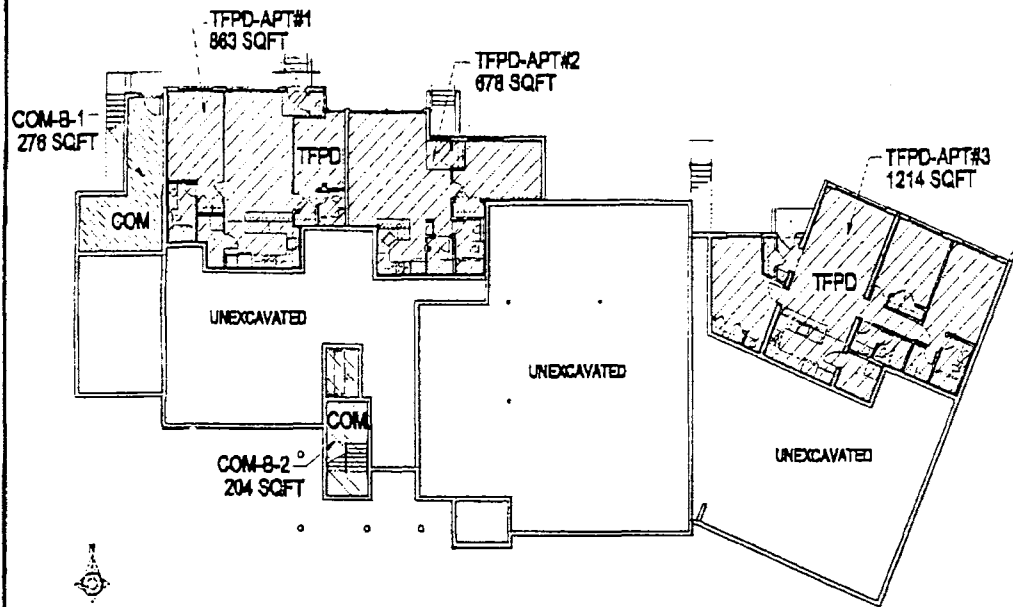
Gross square footage	19,206
less: existing garage space	(2,723)
<b>Net livable/Usable Square footage</b>	<b>16,483</b>

Baseline Square foot cost	<b>\$ 150.39</b>
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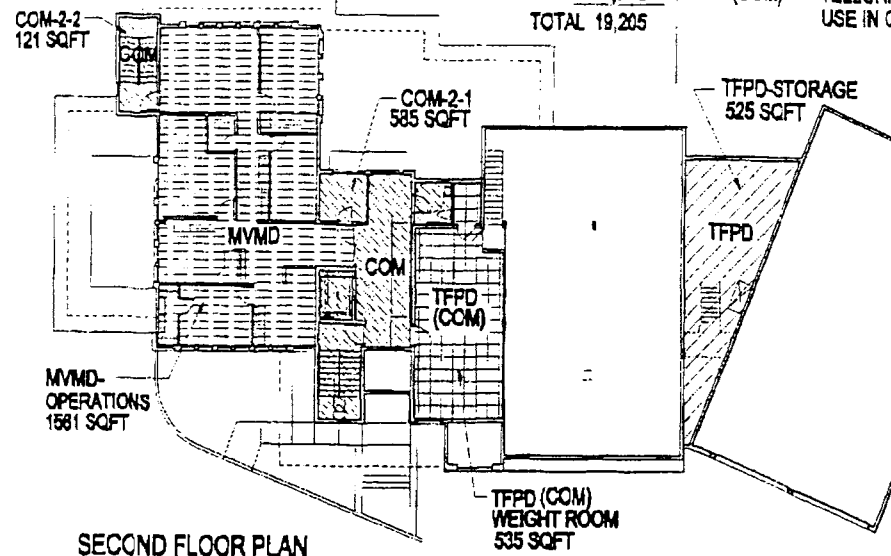
	Square footage	Cost Factor	Projected Cost	TFPD	MVMD	TMV
<b>Basement</b>						
Apt #1	863	150.39	129,787	129,787		
Apt #2	678	150.39	101,964	101,964		
Apt #3	1214	150.39	182,573	182,573		
Common B-1	276	150.39	41,508	13,836	13,836	13,836
Common B-2	204	150.39	30,680	10,227	10,227	10,227
<b>First Floor</b>						
MV-Police Space	3061	150.39	460,344			460,344
TFPD-Garage	2723	30.00	81,690	81,690		
TFPD-New Garage	2300	150.39	345,897	345,897		
Common 1-1	119	150.39	17,896	5,965	5,965	5,965
Common 1-2	497	150.39	74,744	24,915	24,915	24,915
<b>Second Floor</b>						
TFPD-Weight Room	535	150.39	80,459	80,459		
TFPD-Storage	525	150.39	78,955	78,955		
MVMD-Operations	1561	150.39	234,759		234,759	
Common 2-1	585	150.39	87,978	29,326	29,326	29,326
Common 2-2	121	150.39	18,197	6,066	6,066	6,066
<b>Third Floor</b>						
MV-Bldg/DRB/P&Z	1,561	150.39	234,759			234,759
TFPD-Meeting/common	1,207	150.39	181,521	181,521		
TFPD-Storage	520	150.39	78,203	78,203		
Common 3-1	535	150.39	80,459	26,820	26,820	26,820
Common 3-2	121	150.39	18,197	6,066	6,066	6,066
<b>Total</b>	<b>19,206</b>		<b>2,560,568</b>	<b>1,384,268</b>	<b>357,978</b>	<b>818,322</b>
				54%	14%	32%
Alloc of net construction period interest & financing costs (pro-rata)				81,151	20,986	47,973
Allocation of Architectural Costs (1/3,1/3,1/3)				67,893	67,893	67,893
<b>Gross Capital Investment B4 Adjustments</b>				<b>1,533,313</b>	<b>446,858</b>	<b>934,189</b>
2nd floor weight room tenant finish cost (535 sf @ \$42/ft)				(22,300)	11,150	11,150
3rd floor conference room tenant finish cost (1207 @60/ft)				(72,420)	36,210	36,210
<b>Net Contribution After Adjustments</b>				<b>1,438,593</b>	<b>494,218</b>	<b>981,549</b>

**Exhibit C  
Operating Budget**

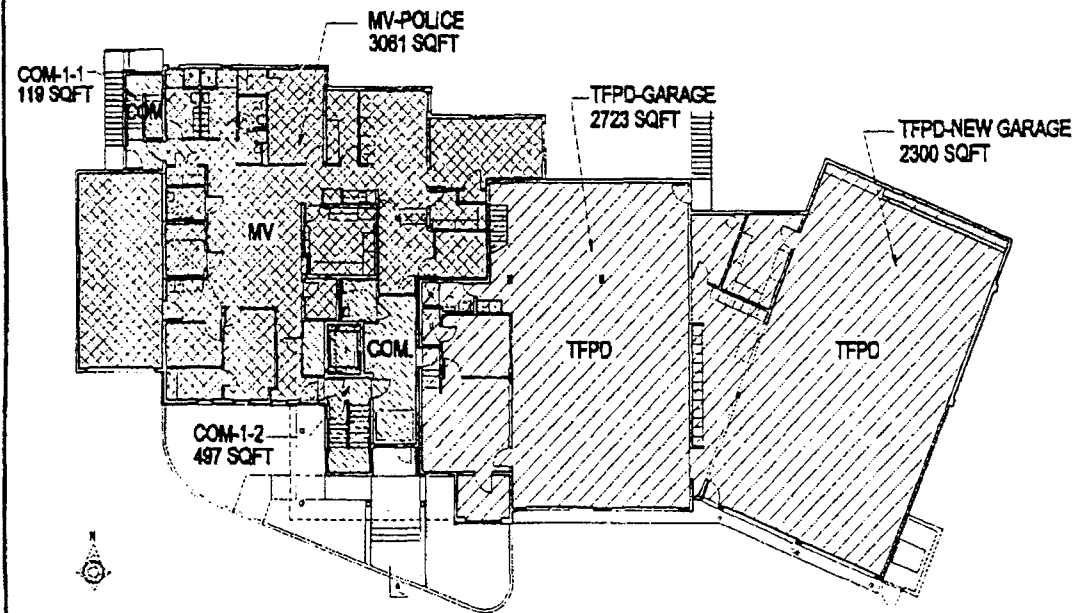
Description	Amount
Insurance-Property/Liability	\$ 5,000
Accounting, Administration	2,000
Common Area Building Maintenance	<b>5,000</b>
Common Area-Landscape Maintenance	5,000
Snow Removal	<b>5,000</b>
Fire Alarm-monitoring	2,000
Security	2,000
Other/Misc	5,000
<b>Total</b>	<b>\$ 31,000</b>



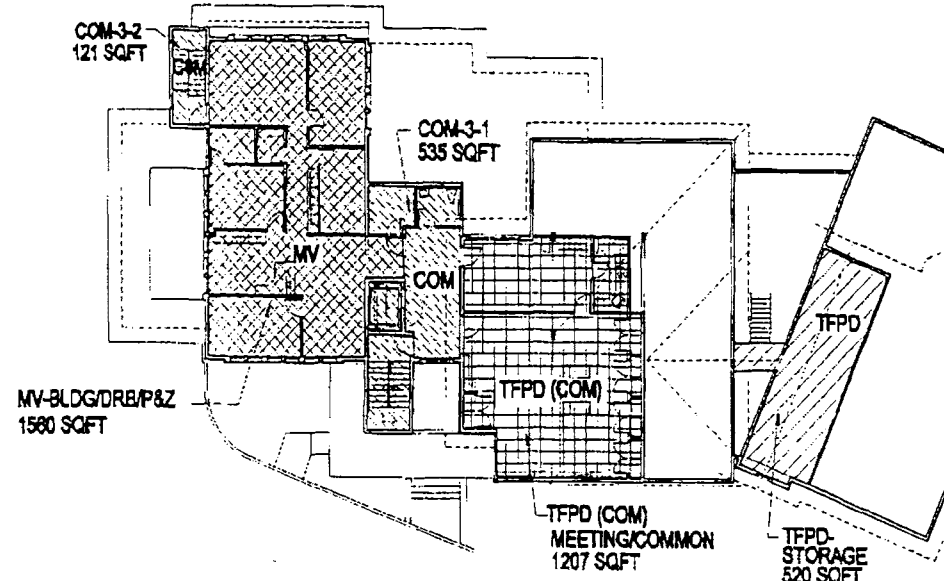
**BASEMENT PLAN**



**SECOND FLOOR PLAN**



**FIRST FLOOR PLAN**



**THIRDFLOOR PLAN**

AREAS (SQFT):	LEGEND:	
2,458	COM	COMMON
8,823	TFPD	TELLURII
4,821	MV	MOUNTA
1,581	MVMD	MOUNTA
1,742	TFPD(COM)	TELLURII
TOTAL 19,205		USE IN C

**EXHIBIT "D"**



Agenda Item 5

**TOWN OF MOUNTAIN VILLAGE**  
455 Mountain Village Blvd.  
Mountain Village, CO 81435

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**TO:** Mayor Benitez and Town Council

**DATE:** August 11, 2020

**FROM:** Finn Kjome, Public Works Director  
J.D. Wise, Assistant Public Works Director

**Re:** Consideration of Approval for the Hiring of a Recently  
Vacated Water Technician Position.

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**OVERVIEW:**

The Water Department has a recent position opening for a Water Technician, as the one employee placed on leave of absence who was scheduled to return to work found other employment during his leave of absence. Public Works is requesting your consideration on filling this vacancy. The training of a water technician is extensive, and it takes considerable time to learn and understand a water system as complicated as ours. Filling this position will return the Water Department to a full staffing level of 4 FTYR employees.





**PLANNING AND DEVELOPMENT SERVICES  
DEPARTMENT**

455 Mountain Village Blvd.  
Mountain Village, CO 81435  
(970) 728-1392

**Item No. 6**

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**TO:** Town Council

**FROM:** Michelle Haynes, Planning and Development Services Director, Luke Adamson, Property Manager, Seth Carson VCA Maintenance Manager & Finn Kjome, Public Works Director

**FOR:** Meeting of August 13, 2020

**DATE:** August 10, 2020

**RE:** Village Court Apartments Update, August

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**Introduction**

During the budget worksessions, Town Council requested monthly check-ins regarding Village Court Apartments (VCA).

**Village Court Apartments Update**

Finn Kjome, Public Works Director has been assisting at VCA as it relates to assessing maintenance, repair and personnel. Seth Carson joined our team in late July and is getting up to speed as maintenance manager.

**Suspension of late fees – Request for Direction**

According to the Cares Act, late fees were suspended per state order through July 24, 2020 thereafter need not be suspended. Staff extended the suspension of late fees into August as a courtesy although we seek direction from Town Council. Staff seeks direction if the Town wishes to continue to suspend late fees through September. In August, 15 people paid rent late or still not have paid with a total late fee waived value of \$500.

**Apartment Management Software and the Discussion of associated processing fees for payments. Please see exhibit A., for a follow up on this item raised during our last VCA Monthly report in July.**

**2020 Work Plan.** Village Court Apartments continues to implement the 2020 work plan as able, including and not limited to the following:

- Sidewalk safety repair. We intend to complete another section of sidewalk recently identified, in August.
- Migration to cellular / internet based alarm system is in progress. Buildings 12 & 14 have been installed to date. (Our alarm system was previously based on centurylink land lines which with the transition to a cellular based system, provides cost savings and a more reliable alarm notification system).
- VCA Capital Reserve Study. The report is in review with staff. The crawl space inspections are pending completion as they are only accessed through individual unit closets and the

contractor is uncomfortable due to Covid with this part of the work scope. We budgeted for this portion of the work to be completed in 2021. The draft reports can be found at the following [link](#). To view just the the building inspection overview document, please see the pdf called, "[a-VCA building inspection overview.pdf](#)."

- Two roof leaks in building 2 & 11 has been identified and are scheduled for repair.
- Grills have arrived and are being installed this week.
- Staff is busy integrating the VCA reserve study, the resident satisfaction survey and other other improvements into the 2021 draft budget. Our new maintenance manager, Seth Carson, has already identified small upgrades such as sound proof carpet pads, that has already improved and will improve soundproofing between units vertically. We look forward to Seth's fresh set of eyes at VCA to assist us with improvements to the property.
- Our next monthly community clean up day is scheduled for August 17<sup>th</sup> at 6:00 pm

Projects moving forward yet with undetermined completion projections due to staffing limitations and delays due to COVID:

- Common area lighting project – Buildings 8 & 9 are complete. As time allows maintenance staff is working on this project.
- Programmable Thermostats – This project is on hold and being re-evaluated. There were fiscal communication gaps between last October and today. Costs to install have exceeded the allotted budget. We will likely rebid the project and redraft the scope of work associated with the rebid process. We are meeting next week to determine the best path forward.
- Cubby doors

Miscellaneous COVID-19 related updates

- We have approved eleven hardship applications to date.
- We have 190 people on the wait list up from 178 last month.
- Luke has been evaluating the fee schedule as time allows. He identified that we were charging not just a pet deposit for cats and dogs, which is a one time fee of \$400, but also a monthly pet fee of \$30. We are removing the monthly \$30 pet fee for cats effective August 1<sup>st</sup> because cats are relatively low impact animals. We feel that the \$30 monthly fee can be justified to purchase waste bags and other associated materials and labor associated with dogs on the VCA property, although open to evaluating this in more detail. I appreciate Luke's willingness to re-evaluate as able, existing fees against a standard of reasonable. We have estimated this impacts about 10 tenants who have cats and each tenant will now save \$30 a month or \$360 a year by removal of this monthly fee.

/mbh

## **Exhibit A. Village Court Apartments Management Software, payment processing and associated electronic payment fee follow up.**

### **Introduction**

At the July 2020 Town Council meeting, Town Council raised questions regarding the software used to manage the property, credit card processing fees and overall accounting at VCA. We intend to address some of those questions here and provide clarity and recommendations where appropriate. VCA processes payments for finance in the same way other departments prepare payments for finance. We receive the receipt, code it appropriately, attached the need for signature if appropriate, and route it to finance for processing. Below, we provide more detail regarding the three points of discussion as a follow up for Town Council review and consideration.

### **Apartment Management Software**

Village Court Apartments' uses Yardi, an industry standard property management software. [Yardi](#) is utilized for lease management, accounting, budgeting, work orders, payment processing, asset management, reminders, pets and prorates. Locally Big Billie's and Shandoka also uses Yardi software.

The Town of Mountain Village Housing Authority has always used Yardi. In 2015 the housing authority researched other possible software and determined an upgrade to Yardi was the best most efficient approach. Although staff is happy to research and provide additional information to Town Council, after discussing this internally between the accounting and VCA departments, we do not recommend a change to the software program in the immediate future. It is being used consistent with the purpose of this software program. Lease management, budget, invoicing, accounting and work orders all occur seamlessly through Yardi. We don't feel changing software would be solving an efficiencies problem. We are happy to re-evaluate moving forward at any point however, if the software does not keep up with its intended use and function. We have benefitted from a historic property management record in Yardi. This is one area at VCA that works well for the staff and tenants.

### **Streamlining Payment Processing and addressing associated fees.**

In 2020 we received a complaint regarding an overfull payment box during the onset of the Covid quarantine. At that time, staff discussed the associated fact that most tenants pay by check and that the electronic processing fees were a barrier to encouraging electronic payments of rent. We discussed how to facilitate a simpler payment method for tenants consistent with Town Council direction.

### Research

In our research we found that

- **Shandoka** tenants pay the electronic payment processing fees and about 60% of their tenants pay by check or money order, the remaining 40% pay by Rent Café via Yardi.
- **Bill Billies** covers the electronic payment processing fees and I do not have a ratio of check to electronic payment.
- At **Village Court Apartments** around 2015/2016 the Housing Director at the time, removed the processing fees that were included in the rents and started charging tenants directly as part of a rent increase proposal at the time. It looked like the rent increases were less than expected; however, tenants were now paying the electronic payment processing fees separately. Staff proposes consideration of covering electronic processing fees in 2021. In July, 90% paid by check or money order, and 10% paid by credit card, debit card or AHC.

**Current Payment Methods:**

**ACH.** ACH is an electronic funds transfer online through Rent Café. There is a \$1.95 flat rate fee associated with this transaction. This option is most efficient for staff because the Yardi ledger entries automatically generate and the money is automatically sent to finance. This is most efficient for the Housing Authority and tenant, if Council agrees that the VCA budget cover the processing fee in 2021. Total budgetary implication is \$5,148 if 100% of all tenants preferred this form of payment.

**Debit Card.** Debit card payments are the second most efficient method of payment, online and through Rent Café. The associated processing fee is between \$2.95 and \$3.95 depending upon the card type used. This option is most efficient for staff because the Yardi ledger entries automatically generate and the money is automatically sent to finance. This is most efficient for the Housing Authority and tenant, if Council agrees that the VCA budget cover the processing fee in 2021. If VCA covered the processing fee and all 220 tenants preferred this method of payment, the budget implication is between \$7,788 and \$10,428.

**Check.** Check is the most time consuming for staff because we manually enter payment and check information into Yardi, then enter into our check payment software, then scan the checks, reconcile the two reports and send it to accounting for processing. We will always process rent by this method and it works for VCA.

**Credit Card Machine.** We have a dedicated land line and the bank charges \$12 per transaction. This is the most expensive and least efficient method of payment. We offer it as a courtesy option for payment. This option is least utilized by tenants and least efficient in terms of staff time to process these payments. We could remove this as an option entirely and save money on a phone line along with the high transaction fee.

**Conclusion.** There will always be a mix of payment types at VCA. Staff's goal would be to encourage and increase electronic payments by tenants.

**Larger Invoice Processing Question.**

Staff does not recommend any changes to how VCA processes invoices. When we process invoices internally, we are able to track expenses and revenues in Yardi which is an integrated software system. We scan invoices so that we can keep good records and send all payment processing to finance once we code the associated paperwork. VCA is a large enterprise and with two administrative staff members, when we are fully staffed, we are able to stay current with finance related matters.

**Staff Recommendation****Electronic Payment Processing Fees**

- Staff recommends we no longer charge electronic processing fees and we would also remove the associated revenue from the budget. We launch an associated communications plan to encourage residents to pay electronically messaging that we will cover the processing fees. Our goal is to encourage electronic payments for ease of the tenant and efficient use of staff time. We can set a 2021 goal that via the communication plan and waiver of processing fees, we intend to encourage 40% electronic payment of rent.

**Apartment Management Software**

- Staff recommends no change at this time.

**Overall accounting methods**

- Staff recommends no change at this time.

