

Town of Rico Memorandum

Date: June 21<sup>st</sup>, 2019

TO: Town of Rico Board of Trustees  
FROM: Kari Distefano  
SUBJECT: Town Manager's Report

*1. Meeting with Great Ecology planner Chris Loftus and Mark Laska*

At the last meeting we had with representatives of BP, they invited (and funded) a planner from Great Ecology named Mark Laska. The intent was to help Rico master plan the river corridor area. I have been having conversations with Mr. Laska and his associate Chris Loftus. They will be here in Rico on Wednesday the 26<sup>th</sup> and Thursday the 27<sup>th</sup> to discuss mater planning efforts.

*2. 2<sup>nd</sup> reading of an Ordinance establishing fire safety standards for existing commercial structures.*

The first reading of this ordinance passed in May. As a reminder The Rico Fire Department initially requested this Ordinance when there was a fire in the Prospector building. The object of the ordinance is to ensure that structures that are used for accommodations have adequate fire safety measures. The ordinance requires that all commercial structures that are being used for accommodations have fire alarms, carbon monoxide detectors and fire escape routes. It also has provisions for enforcement should the facility fail to provide such safety measures. We have added a requirement for anyone that wants to short term rent their house that they give us documentation of smoke alarms and carbon monoxide detectors.

*3. Special Use Permit application the short-term rental of 209 S. Picker, Helen Matzik, Owner*

Helen Matzik has been using her house, located at 209 S. Picker, as a short-term rental. Until now, the Town has not really been enforcing the provisions of Ordinance 2011-3, which allows short-term rentals but requires a special use permit to operate them. After having some difficulties last winter with frozen pipes in Silverglance at a short-term rental venue, the Town has started enforcing the Special Use Permit requirement. Helen Matzik would like to be in compliance and has applied for the permit. The application is attached to this memo for your review and is complete. Special Use Permits should be reviewed according to the following criteria:

Compatibility with Surrounding Area. The proposed use or operation is compatible with surrounding land uses and with the surrounding neighborhood.

General. The location, size, design and operating characteristics of all proposed uses shall mitigate any adverse effects, including visual impacts, on surrounding properties.

Noise. At no point on the bounding property line of any use in any district shall the sound pressure level of any use, operation or plant produce noise intensity greater than that customarily level of the underlying Zone District and surrounding neighborhood so as to create a nuisance or detract from the use and enjoyment of adjacent property. For the purposes of this section, bounding property line shall be interpreted as being at the far side of any street alley, stream or other permanently dedicated open space from the noise source when such open space exists between the property line of the noise source and adjacent property. When no such open space exists, the common line between two (2) parcels of property shall be interpreted as the bounding property line.

Smoke and Particulate Matter. No proposed operation or use in any district shall at any time create smoke and particulate matter that, when considered at the bounding property line of the source of operation creates a nuisance or distracts from the use and enjoyment of adjacent property.

Odorous matter. No proposed use shall be located or operated in any district that involves the emission of odorous matter from a source of operation where the odorous matter exceeds the odor threshold at the bounding property line or any point beyond the tract on which such use or operation is located. The odor threshold shall be the concentration of odorous matter in the atmosphere necessary to be perceptible to the olfactory nerve of a normal person.

Explosives. No use involving the manufacture or storage of compounds or products that decompose by detonation shall be permitted in any district, except that chlorates, nitrates, phosphorus and similar substances and compounds in small quantities for use by industry, school laboratories, druggists or wholesalers may be permitted when approved by the Fire Marshall as not presenting a fire or explosion hazard.

Flammables. The storage and use of all flammable liquids and materials such as pyroxylin plastics, nitrocellulose film, solvents and petroleum products shall be permitted only when such storage or use conforms to the standards and regulations of the Town of Rico and receives the approval of the Fire Marshall.

Toxic and Noxious Matter. No proposed operation or use in any district shall emit a concentration across the bounding property line of the tract on which such operation or use is located of toxic or noxious matter that will exceed the threshold limits set forth by the Colorado Department of Health.

Vibration. No proposed operation or use in any district shall at any time create earthborne vibration that, when considered at the bounding property line of the source of operation creates a nuisance or distracts from the use and enjoyment of adjacent property.

Open storage. No open storage of materials or commodities shall be permitted in any district except as an accessory use to a main use located in a building in the MU Zone District. No open storage operation shall be located in front of a main building. No wrecking, junk, or salvage yard shall be permitted as a storage use in any district.

Glare. No proposed use or operation in any district shall be located or conducted so as to produce intense glare or direct illumination across the bounding property line from a visible source of illumination nor shall any such light be of such intensity as to create a nuisance or detract from the use and enjoyment of adjacent property.

Traffic. No proposed use or operation shall be permitted where the use would create undue traffic impacts on Town roads and affected residential neighborhoods.

Off-Street Parking. Adequate off-street parking is provided to accommodate the proposed use.

Like last month's request, the proposed activity is unlikely to produce noxious odors, noise, smoke or problems with any of the other issues mentioned in the review criteria, parking and traffic in the area could be of concern. The house sits on a large lot at the end of Picker Street. There is adequate parking. In the past, the Town has required that the applicants be limited to two off-street parking spaces. The Town has also required that the applicant maintain a contract for property management services with a local representative available to respond to emergencies or disturbances within an hour. The Town has required that contact information for the local representative be kept current and be available to local law enforcement as well as Town officials.

The Rico Planning Commission approved this request with the requirement that Ms. Matzik give us photos of her smoke alarms and carbon monoxide detectors. There should be a renewal review after one year of the short-term rental operation. This application can be approved, denied or approved with conditions.

*4. Approval of a Historic Alteration Certificate Application for 122 N. Garfield, requested by Erin Johnson*

Erin Johnson on behalf of Strategic Design Group is applying for a Historic Alteration Certificate. She bought the old Catholic Church at 122 N. Garfield, which used to be a one-room schoolhouse. She has a number of requests, all of which are enumerated in her application, which is included in this packet. In brief, she would like to cut the building apart, extend the front toward Garfield Street and add a portion in the middle. The new section will have a covered porch with a hip roof. During this process, she intends to lift the building and add a foundation. Currently the building doesn't have a foundation, electricity or water. She would also like to use steel siding rather than cedar, open the sides of the bell tower so that the bell that was stolen can be replaced and seen, and replace the deteriorated front deck. She intends to repair or replace the window and door trim and replace the chimney so that she can install a pot-belly stove.

The building as it exists encroaches into the 5 foot set back. Erin does not want to move the building so the new middle will also encroach. She has talked to the adjacent property owner about purchasing the adjoining lot and thus resolve the setback encroachment. Apparently he is unwilling to sell but may agree to an easement. The Rico Land Use Code applies the following standards of review, which Erin also addresses in her narrative:

- A. The alteration would not physically alter the exterior appearance of the historic architectural features, not including: repair or restoration of historical architectural features, the reconstruction of missing portions of the building or structure which historically existed, or removal of non-historic architectural features;
- B. The alteration would not create an addition which visually detracts from the historic building or structure; the visual impact of additions can be minimized by using similar design, exterior material, fenestration, and trim material, and by setting the addition back from the façade facing a public right-of-way or constructing the addition on the rear of a structure, or,
- C. The alteration is necessary to correct unsafe or dangerous conditions of any building, structure, or feature, or parts thereof where such condition is declared unsafe or dangerous by the Town or the Rico Fire Protection District.

D. The Planning Commission may continue review of an Alteration Certificate application with the consent of the Applicant, to allow for additional information, which is necessary to review the application or to allow the Planning Commission and the Applicant to explore acceptable alternative solutions to the original application.

It is important to note that the Church is not listed as a Colorado State or National Historic building. The listing is local. This application can be approved, denied or approved with conditions. The planning commission approved this request but felt that the encroachment of the new portion of the building into the setback should be dealt with separately. I received an email from Erin Johnson on the afternoon of Friday June 21<sup>st</sup> saying that the surveyors had discovered that the building was closer than she thought to the lot line. She will follow up on Monday.

*5. 1<sup>st</sup> reading of an Ordinance granting an electric power utility franchise to San Miguel Power Association*

This is basically a renewal of our existing agreement with San Miguel Power Association. The agreement gives SMPA an exclusive right to supply the Town of Rico with power and grants SMPA the right to engage in any activities required to maintain the infrastructure necessary for their operations in the Town's streets and rights-of-ways. The Town retains the right to use, control and regulate their actions within the Town. The agreement assures that Town that rates will be fair and reasonable. The agreement also includes street lighting service. There are provisions regarding the undergrounding of power lines and service to new areas. The agreement extends for 15 years unless terminated. There is a fee of 2% percent of SMPA revenues that will be paid to the Town. Our attorney has reviewed the agreement and made some minor revisions. The agreement also needs to be approved by the SMPA Board. I have included the agreement in this packet if you are interested in further details.

*6. Resolution supporting the Rico Evacuation plan supplied by Keith Keesling, Dolores County Emergency Manager*

Keith Keesling, the Dolores County Emergency Manager has given us an evacuation plan. It is included in this packet. I have read it and made some minor revisions. He is requesting that the Rico Board of Trustees approve this plan.

*7. First reading of an Ordinance amending the 2011 Rico Land Use Code to include regulations regarding tiny homes*

There have now been two proposals by potential developers to construct tiny homes in the Town of Rico. Because tiny homes are treated differently by both the Colorado Department Health and Environment regarding the usage of water and the International Building Code regarding egress, lofts and stairways among other things it is important that we define tiny homes. That definition will ultimately end up in our revised land use code but because we may be asked to issue building permits for tiny homes prior to the adoption of the revised land use code, I believe that it is important to clearly define tiny homes sooner rather than later. The purpose of this ordinance is to define tiny homes and clearly establish requirements regarding their construction. I have attached a copy of the ordinance for your review.

*8. Special Use Permit application by Susan and Larry Steele requesting a permit to live in their RV.*

As you probably remember, last year Susan and Larry Steele were living in their RV next to Mountain Top Fuel while they were running that operation on behalf of Liam Chamberlain. At that time, Mr. Chamberlain came to the Board of Trustees and requested permission to allow them to continue to live there although the Town of Rico has restrictions on living in an RV for an extended period of time. Mr. Chamberlain was told that the Steeles would be required to apply for a special use permit. Mr. and Ms. Steele have since taken over the operations of Mountain Top Fuel and would like to continue to live in their RV. They have applied for a special use permit and the application is complete except for a statement from the County Treasure showing the status of current taxes due on the affected property. I have advised them that we will need that information prior to the meeting and they have agreed to provide it. I have included a copy of the application in this packet.

The Rico Land Use Code states the following:

Use of vehicles as residences

- A. The unauthorized use of vehicles as residences within a public rights-of-way and on public property is deemed to be injurious to residential and nonresidential neighborhoods alike and conducive to the creation and perpetuation of congestion, unwanted noise, sanitation problems, unsightly visual conditions and confrontations between residents and nonresidents. The intent and purpose of this Section is not to regulate vehicles or those locations where vehicles may be parked or stored, except as otherwise set forth herein, but to prohibit activities and occupancies within vehicles so as to protect the integrity of neighborhoods, preserve public streets, rights-of-way and parks for their intended public purposes, ensure the proper use of public property in

conformity with zoning and land use regulations and promote the public health and safety.

- B. Prohibitions. No person shall occupy any vehicle upon any municipal street, state highway, alley or public right-of-way or public property for the purpose of providing residence or residential living or sleeping quarters or storage, whether temporary or permanent, except as otherwise set forth herein. The type or nature of any given vehicle shall not be conclusive as to whether a vehicle is being occupied for living or sleeping quarters or other residential use.
- C. Exemptions. The prohibitions as contained in this Section shall not apply to activities undertaken pursuant to a valid and authorized land use, building or camping permit issued by the Town or where a vehicle is used for occupancy for less than (72) hours total within a calendar year.

As you can see, there are provisions for exceptions including acquisition of a building permit or a camping permit issued by the Town. I could not find any historic information regarding Town issuance of camping permits so I don't not know whether or not the Town has ever issued and permit or if so, under what circumstances. The Planning Commission will be reviewing this application prior to the Board of Trustee's meeting and they will make a recommendation. The Board can approve, deny or approve with conditions.

#### *9. High resolution aerial photo of the Town of Rico*

Amber Fisher of the Dolores County GIS program contacted me and asked in the Town of Rico would be willing to participate in the funding of a high-resolution aerial photo of the Town of Rico. I believe Rico's contribution would be \$3458. I will confirm that with Amber. I have worked with high-resolution photos and they are invaluable for planning purposes. I don't know when the photo would be available but I would recommend that we contribute to this if we can get it for \$3458. I have also contacted Paul Hora from SMPA to see if they had any interest in contributing.

#### *10. Radar Signs*

As you may know, Tom Halper has to have hip surgery and will be out of commission for up to five months. I have looked at the possibility of installing radar signs at each end of Town to slow people down. While not as effective as a speeding ticket, these signs are generally considered to be fairly successful in slowing drivers down. There are a pair of used radar signs being offered by the Town of Garden City Colorado and there are also a variety available at <https://www.trafficsafetywarehouse.com/Radar-Speed-Signs/products/69/>. Prices vary according

to the features and mounts. They range from \$2,500 - \$17,000. The Garden City signs were originally around \$7,200 and they are entertaining bids until mid-July. I think that this is an option that we should consider whether it be the Garden City signs or another type.

#### *11. Decision by Verizon default to drop service in Rico*

It has come to my attention by way of several different people that Rico appears to have been dropped from Verizon's service area. Mayor Pro-Tem, Barbara Betts has more information on this, but it is my understanding that this may be a violation of their FCC license agreement. I believe that it is worthwhile to discuss what we as a Town may want to do about this.

#### *12. Community Prospectus*

As some of you probably know, Rico is in an opportunity zone. The Choose Colorado website define opportunity zones as the following:

Opportunity Zones were enacted as part of the 2017 tax reform package (Tax Cuts and Jobs Act) to address uneven economic recovery and persistent lack of growth that have left many communities across the country behind. In the broadest sense, the newly enacted federal Opportunity Zone (OZ) is a federal tax incentive for investors to invest in low-income urban and rural communities through the favorable treatment of reinvested capital gains and forgiveness of tax on new capital gains.

This economic and community development tax incentive program provides a new impetus for private investors to support distressed communities through private equity investments in businesses and real estate ventures. The incentive is deferral, reduction and potential elimination of certain federal capital gains taxes.

I believe that this zone represents an opportunity for Rico to encourage some modest economic development. The folks at Region 9 have suggested that we produce a community prospectus. I have produced a draft based on examples from Gunnison and the one that Region 9 wrote for Dolores County. What I would like some direction on is, whether or not we want to make this prospectus available to potential investors and if so, what revisions would you like to see. Unfortunately the file is too big to email or post on the website however, it will be available on google drive on Monday and a hard copy will be available to at the meeting or earlier if you stop by the Town Hall.

#### *13. November Ballot Initiatives*

In addition to the Board members that will be running for re-election, we will be placing other ballot initiatives on the November Ballot. One asks the voters whether or not the Town of



Rico should opt out of Senate Bill 152, which is a bill prohibiting most uses of municipal or county money for infrastructure to improve local broadband services without first going to a vote of the people. This bill also restricts the ability of local government to engage in public private partnerships with broadband companies. Unfortunately, when Dolores County opted out of this bill, Rico did not participate and given the fact that we currently have a broadband company that seems willing to make efforts to improve broadband here, I believe that it behooves the Town to potentially make available avenues to grant funding. I have included a copy of the proposed ballot language and the resolution in this packet.

I have also attached a copy of two proposed ballot initiatives asking the voters for an increase in our mill levy for infrastructure. The Board needs to discuss and decide which, if any or both should be included on the November Ballot.

At this point, both ballot initiatives are in draft form. The official language and a resolution will be presented for approval at the July meeting.

TOWN OF RICO  
ORDINANCE NO. 2019-

**AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE  
TOWN OF RICO, COLORADO ESTABLISHING FIRE SAFETY  
STANDARDS FOR EXISTING COMMERCIAL STRUCTURES,  
INSTITUTING A COMPLAINT PROCEDURE, AND SETTING  
FORTH PENALTIES FOR VIOLATIONS.**

**WHEREAS**, the Board of Trustees of the Town of Rico is authorized pursuant to Sections 1.2 and 2.5 of the Town of Rico Home Rule Charter and C.R.S. 31-15-103, as may be amended from time to time, to adopt regulations as are necessary to protect the health, welfare, and safety of the public;

**WHEREAS**, Town of Rico Ordinance 2016-1 requires any new commercial structures to conform to the 2006 International Building Code (IBC) but that the IBC did not apply retroactively to existing commercial structures;

**WHEREAS**, three commercial structures which are used for housing and accommodations, existed at the time Ordinance 2016-1 was adopted;

**WHEREAS**, in the spring of 2018, there was a fire in one of the three commercial structures and the Board of Trustees now desire to ensure the safety of the general public by requiring that all three commercial structures be equipped with adequate fire safety measures as set forth in the IBC, as well as Colorado statutes;

**WHEREAS**, Colorado law provides that the Town may place reasonable restrictions upon the use of property for the promotion of the general welfare and structures that are unsafe may work injury to both persons that reside in the unsafe structures but also to the general public such that the requirement that these existing structures comply with the IBC fire safety standards protects the health and safety of the community;

**WHEREAS**, a complaint procedure is necessary to allow an opportunity to be heard; and

**WHEREAS**, the need to ensure compliance with the IBC's fire safety standards for the all commercial structures is of paramount importance and this ordinance sets forth penalties for any violations.

**NOW, THEREFORE, THE BOARD OF TRUSTEES OF THE TOWN OF RICO, COLORADO, ORDAINS:**

1. Fire protection standards for all existing commercial structures that were previously exempt from Ordinance 2016-1 shall now be required, as follows:
  - a. each commercial structure shall be equipped with a fire alarm and detection system in accordance with IBC, Section 907.;
  - b. each commercial structure shall installation of carbon monoxide alarms set forth in C.R.S. 38-45-101, as may be amended from time to time;
  - c. each commercial structure shall comply with IBC, Section 3404 concerning fire escapes;
  - d. the installation of a fire escapes may require a building permit pursuant to Rico Land Use Code (RLUC), Article IV, as applicable;
  - e. each commercial structure shall be inspected by the Town Building Inspector within ten (10) days after complying with this ordinance.
  - f. Alterations to existing structures, to comply with this Ordinance, shall be completed within thirty (30) days of enactment, except the fire escape installation shall be allowed ninety (90) days to complete the installation;
  - g. An appeal from a decision of the Enforcement Official shall be made to the Board of Adjustments following the procedure set forth in RLUC, 404;
  - h. It shall be unlawful for any owner of a commercial structure to allow occupancy of the same without the fire alarm and detection system,

carbon monoxide alarms and fire escapes installed within the time frame set forth above in Subsection E above; and

- i. A violation of this Ordinance, shall be enforced as a violation of the Town of Rico Land Use Code, and is subject to the enforcement provisions and penalties provided RLUC 730 through 742.

## 2. Effective Date

The provisions of this Ordinance shall become effective immediately upon final passage as defined in Rico Home Rule Charter, Section 3.5.

## 3. Savings Clause

If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED PUBLISHED on first reading by the Board of Trustees for the Town of Rico this \_\_\_\_ day of \_\_\_\_\_, 2019.

READ, APPROVED AND ADOPTED BY FINAL READING by the Board of Trustees for the Town of Rico this \_\_ day of \_\_\_\_\_, 2019

TOWN OF RICO, COLORADO

\_\_\_\_\_  
Zachary McManus, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Linda Yellowman, Town Clerk

\_\_\_\_\_  
Date

## SPECIAL USE PERMIT APPLICATION

### TOWN OF RICO

Applicant Name: Helen Matzick Phone Number: 303-880-4816  
Address: 2240 Clay St. #606 Fax No. \_\_\_\_\_  
Denver CO 80211 email: hmatzick@gmail.com  
Street Address and Legal Description of Subject Property: Lots 34, 35, and 36, Blk 34  
209 S. Picker Street Town of Rico  
Rico CO 81332

Zone District of Subject Property: \_\_\_\_\_

Description of Special Use Request (Use separate letter) *See Rico Land Use Code §420*

Generally; 424 Submittal Requirements:

Reasons Special Use Permit should be granted (Use separate letter) *See Rico Land Use Code §428:*

- ☒ 1. Statement from County Treasurer showing status of current taxes due on affected property
- ☐ 2. Letter of agency if applicant is other than the owner of the property
- ☒ 3. Complete Special Use Permit Narrative
- ☒ 4. An Application Fee in the amount of \$200.00.

Attach a site plan and any other information necessary to clearly demonstrate eligibility for the requested Special Use Permit based on the review standard in §436 in the Rico Land Use Code and attach a mailing list with names, addresses, and property owned of all property owners within 200 feet of subject property with certificate of mailing.

*I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.*

Signature: Helen Matzick Date: May 13, 2019

Date Application Received: \_\_\_\_\_ Date of Hearing: \_\_\_\_\_

Application Fee Received: \_\_\_\_\_ Board of Adjustments Action: \_\_\_\_\_

Application Complete: \_\_\_\_\_ Approval Subject to Conditions: \_\_\_\_\_

Mailing Notice Complete: \_\_\_\_\_ Application Reviewed by: \_\_\_\_\_

Applicant required Title Certificate from title company or attorney opinion letter listing name of property owner(s), liens, judgments, etc. affecting title to property.

☐ Yes ☐ No

SCHEDULE # 504735107006 R 001  
 JANIE STIASNY  
 DOLORES COUNTY TREASURER  
 409 NORTH MAIN  
 PO BOX 421  
 DOVE CREEK, CO 81324  
 LEGAL 209 S. PICKER STREET  
 17-5047-351-C7-006 FROM: MARGARET MATZICK  
 RICO LTS 5-16, 25-36 BLK 34 35-40-11  
 B-137 P-48 R-241 P-230(DC) B-333 P-297(WTR)  
 B-397 P-425(DC)426(LTRS) B-357 P-428(PRD)  
 (ENTIRE LEGAL MAY NOT BE SHOWN)  
 MATZICK HELEN M.  
 2240 CLAY ST. #606  
 DENVER CO 80211

2018 TAX PAYMENT RECEIPT  
TAX DISTRICT 102

|                     |            |         |
|---------------------|------------|---------|
| TAX ROLL PAGE- 1068 | #          | 5294    |
| ACTUAL VALUE        | 286404     |         |
| ASSESSED VALUE      | 20622      |         |
| MILL LEVY           | 75.429     |         |
| TAX AMOUNT          | 1,555.50   |         |
| ADJUSTMENT          | .00        |         |
| ADMINISTRATIVE FEE  | .00        |         |
| SPECIAL ASSESSMENT  | .00        |         |
| ORIGINAL AMOUNT DUE | 1,555.50   |         |
| AMOUNT PAID TO DATE | 1,555.50   |         |
| BALANCE DUE         | .00        |         |
| TAX PAID            | 1,555.50   |         |
| PAID PAID           | .00        |         |
| MISCELLANEOUS PAID  | .00        |         |
| TOTAL AMOUNT        | \$1,555.50 | (CHECK) |

DATE OF PAYMENT 05/08/2019 14:04 TAX RECEIPT VALID UPON CHECKS CLEARING YOUR BANK



The Red House  
Rico Colorado  
Helen M. Matzick, owner  
2240 Clay Street No. 606  
Denver CO 81332  
303-880-4816  
hmatzick@gmail.com  
ricoredhouse@gmail.com

Town of Rico  
P.O. Box 9  
Rico, CO 81332

May 13, 2019

To Whom It May Concern:

I, Helen M. Matzick, owner of 209 S. Picker Street, Rico, CO 81332, am applying for Special Use Permit ("SUP") for my property to be used as a short-term rental (under 30-days) in Rico, Colorado.

I am 3<sup>rd</sup> generation to Rico with my family's history dating back over 115 years to my grandparents (and former Dolores County Judges) George and Helen Hicks. The love I have for Rico runs deep in my veins and I love seeing positive growth within the town. In my opinion, Rico is the most beautiful place to experience. I love sharing with my friends, family and those beyond. The ability for me to offer short-term rentals allows me to visit Rico in my own space while sharing it with others. Additionally, the income received from the short-term rental property will contribute to Rico's economy through the form of sale and occupancy tax. Furthermore, I promote all local businesses within my listing in hopes that the renters will experience the great resources Rico has to offer. Finally, any time I am in need of assistance with my home, I first seek local help for housekeeping, repairs and maintenance, yard work, snow removal, and fire wood. The use of this home as short-term rental will allow me to use resources to give back to the community.

I believe I am in compliance per Standards of Review as found in Rico Land Use Code §428 in the following ways:

- The property in question is compatible with surrounding land uses and within the surrounding neighborhood as a residential property.
- I have no plan to alter the existing structure thus not adversely altering the current visual impact on surrounding properties.

- I have not received any noise complaints from any neighbors/surrounding area.
- I have not received any complaints regarding smoke or particulate matter. There is a fire pit and chimney (from a wood heat stove). Both are on the south side of the structure and not adjacent to any boundary properties or neighbors. The south side of the structure faces vacant land, which I own.
- I do not intend to use the property in any matter that would create odorous emissions.
- I do not intend to manufacture or store compounds or products of any explosives or flammable nature.
- I do not intend to have any operations that will emit toxic or noxious matter.
- I do not intend to have any operations that will create earthborn vibrations.
- I do not intend to have any open storage of materials or commodities.
- I have not had any complaints from neighbors regarding any glare/direct illumination.
- The amount of renters and type of vehicles commonly driven by those renters should not create undue traffic impacts on Town roads and affected residential neighborhoods.
- Although at times, there will be extra cars on the property, I always request for my guests to park directly in front of my property or to the south as this is further property that I own.

Thank you for your consideration.

Sincerely,



Helen M. Matzick



## AFFIDAVIT OF MAILING PUBLIC NOTICE LETTER

Town of Rico  
P.O. Box  
Rico, Colorado, 81332

Re: Certification and Affidavit of Mailing Public Notice Letter for  
Lots 34, 35, and 36, Block 34, Town of Rico.

I hereby declare that I, Helen M. Matzick, mailed a copy of the Town approved, enclosed public letter via U.S. First Class Mail, postage prepaid thereon on May 13, 2019 to the attached list of property owners. The public notice letter was prepared and mailed in accordance with the public noticing requirements of the Rico Land Use Code. The public notice letter was placed in the mail on May 13, 2019, which was 20 days prior to the public hearing(s) to be held on June 12, 2019. The list of property owners includes all lot and condominium property owners located within 200 feet of the boundary of the existing or proposed lot(s). The adjacent property owner list was compiled from the Dolores County GIS website or Assessors Office.

Attached is the copy of the noticing letter, list of all property owners noticed, including their lot number and mailing address, a copy of the vicinity map mailed with the noticing letter, and a map showing all lots that were included within the 200 foot noticing area.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.



Helen M. Matzick

Date: May 13, 2019

**Property Owners within 200 feet of  
209 South Picker Street  
Rico, CO 81332**

Gary P. Gass and Chrstina L. Gass  
P.O. Box 102  
Rico, Co 81332  
(Lots 1 through 4, Block 34)

Jay Douglas Milstead  
1420 South 6<sup>th</sup> Avenue  
Yuma, AZ 85364  
(Lots 39 & 40, Block 34)

Michael Dean Austin  
117 Woodhollow Drive  
Bertram TX 78605  
(Lots 37 & 38, Block 34)

Andrew Frunk and Margaret Belaska  
P.O. Box 264  
Rico, CO 81332  
(Lots 1 through 4, Block 35; Lots 19, 20, 20, Block 37)

Mary and Michael Carl Hagen  
P.O. Box 101  
Rico, CO 81332  
(Lots 21 & 22, Block 36)

Thomas A. Clark  
P.O. Box 754  
Ophir, CO 81426  
(Lots 18 through 20, Block 36)

Donna L. Kyle  
P.O. Box 1553  
Telluride, CO 81435  
(Lots 1 through 3, Sam Patch Subdivision)

## NOTICE OF PENDING SPECIAL USE PERMIT APPLICATION

May 13, 2019

RE: Public Hearing on Special Use Permit Application

Dear Property Owner,

You are receiving this public notice as required by the Town of Rico Land Use Code because you own property within 200 feet of a proposed special use permit application.

**Name of Applicant:** Helen M. Matzick

**Type of Development Application(s):** Special Use Permit for Short-Term  
Rental

**Legal Description:** Lots 34, 35, and 36, Block 34, Town of Rico

**Address:** 209 S. Picker Street, Rico, Colorado

**Lot or Site Size:** 75' x 100'

**Review Authority:** Rico Planning Commission

**Rico Planning Commission Hearing Date:** June 12, 2019 at 7:00pm

**Location of Public Hearing:** Rico Town Hall  
2 Commercial Street  
Rico, CO 81332

Send emailed comments addressed to the [townmanager@ricocolorado.gov](mailto:townmanager@ricocolorado.gov)

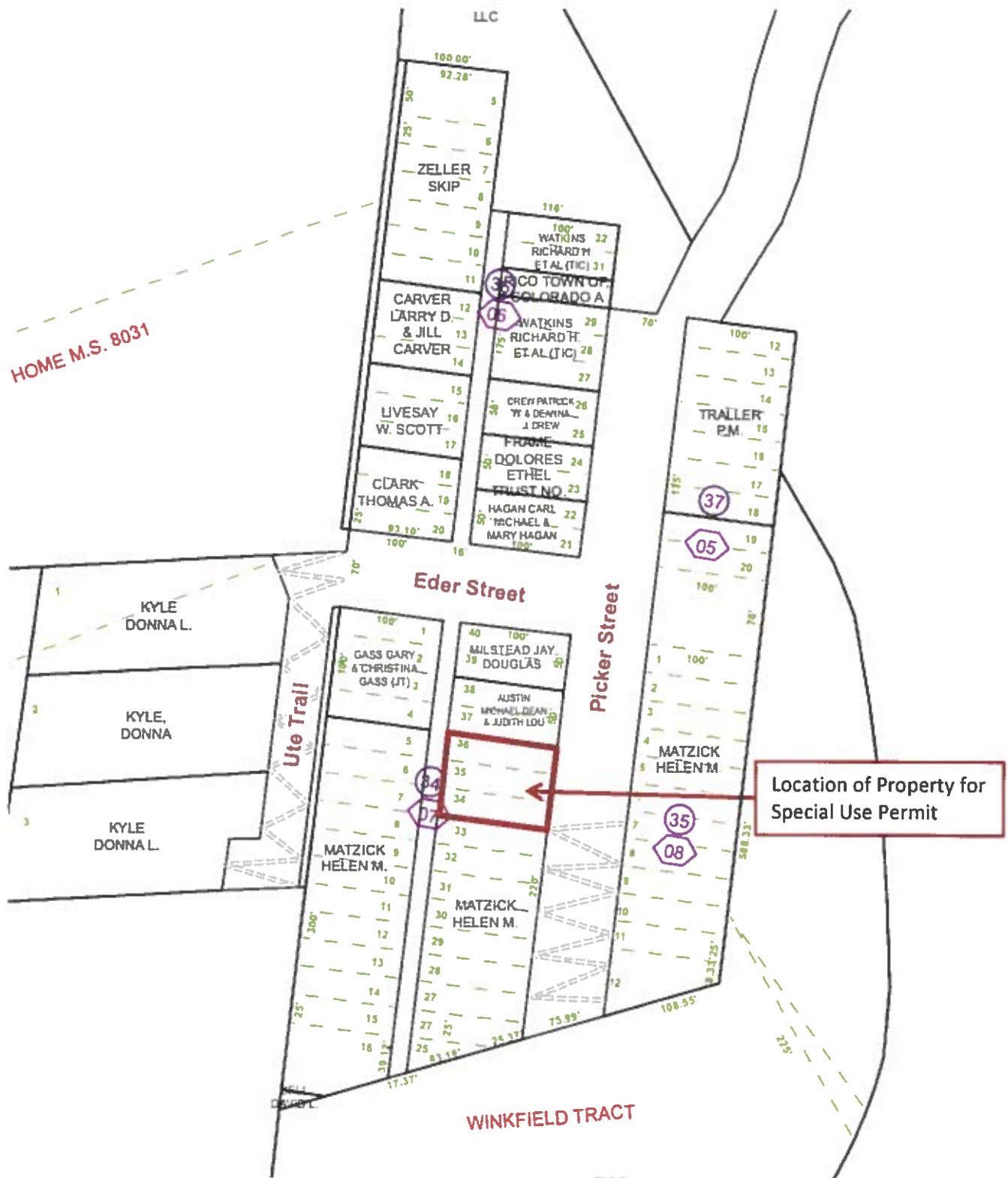
Or by surface mail to:

Kari Distefano  
Town of Rico  
PO Box 9  
Rico Colorado, 81332

Sincerely,

Kari Distefano, Rico Town Manager

VICINITY MAP



**HISTORIC ALTERATION CERTIFICATE****APPLICATION**  
**TOWN OF RICO**Applicant Name: Strategic Design Group LLC Phone No. 303-588-2695Address: PO B 189 Fax No. \_\_\_\_\_Rico CO 81332 E-Mail: enr@fone.net

Exh 1 Please include a separate letter if the Applicant will be represented by an agent or other representative.

**Street Address and Legal Description of Subject Property:**Exh 2 122 W Garfield St., Rico, CO 81332 - Lots 31-34, Block 24Exh 3 Zone District of Subject Property: Residential (R) Town of Rico

- Exh 4 \_\_\_\_\_ 1. Title Certificate from title company or attorney opinion letter listing name of property owner(s), liens, easements, judgments, etc., affecting title to the property.
- Exh 5 \_\_\_\_\_ 2. Statement from County Treasurer showing status of current taxes due on affected property.
- Exh 1 \_\_\_\_\_ 3. Letter of agency if Applicant is other than the owner of the property.
- Exh 6 \_\_\_\_\_ 4. Complete narrative describing the proposed alterations and statement describing how the application complies with the review standards (See Section 443.5).
- Exh 7 \_\_\_\_\_ 5. An Application Fee in the amount of \$150.00.

Please see Rico Land Use Code for regulations concerning Historic Landmark regulations, particularly Section 443. Include building elevations and other relevant construction drawings (Section 443.3). Note: Review of façade alterations by the Board of Trustees is required for buildings in the Historic Commercial Zone District (see Section 240.)

*I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.*

Signature: [Signature] Manager Date: 6/2/19**FOR TOWN USE ONLY:**

|                                  |                                       |
|----------------------------------|---------------------------------------|
| Date Application Received: _____ | Date of Hearing: _____                |
| Application Fee Received: _____  | Planning Commission Action: _____     |
| Application Complete: _____      | Approval Subject to Conditions: _____ |
| Mailing Notice Complete: _____   | Application Reviewed by: _____        |

**Strategic Design Group**  
Erin Johnson, Manager  
9 S. Glasgow Avenue, POB 189  
Rico, Colorado 81332  
303-588-2695  
erin@fone.net

---

May 28, 2019

Kari Distefano  
Rico Town Manager  
PO Box 9  
Rico, CO 81323

RE: Letter of Authorization

Dear Kari,

This letter is to allow Erin Johnson to act on behalf of Strategic Design Group LLC, a Colorado limited liability company, regarding all matters related to the development of the 122 N. Garfield Street property.

Sincerely,



Erin Johnson, Manager  
Strategic Design Group LLC



*Application Exh 2*

|          |  |          |    |
|----------|--|----------|----|
| Legal #1 | RICO LOTS 31-34 BLK 24 36-40-11                        |          |    |
| Legal #2 | B-22 P-416(D) B-51 P-39(D) B-60 P-338 B-95 P-350(ORD)  |          |    |
| Legal #3 | B-193 P-342(WD) B-207 P-482(APPT) B-238 P-309-325(SWD) |          |    |
| Legal #4 | B-238 P-326-336(QC) B-250 P-23(QC) B-333 P-297(WTR)    |          |    |
| Legal #5 | 167888(QC) 167889(SA)                                  |          |    |
| Section  | 36   | Township | 40 |
| Range    | 11   |          |    |



No photo available for this property.

## Sale Information

|         |                             |      |  |
|---------|-----------------------------|------|--|
| Date    | 05/24/2018                  | Book |  |
| Price   | 41300                       | Page |  |
| Grantor | BISHOP OF PUEBLO            |      |  |
| Grantee | STRATEGIC DESIGN GROUP, LLC |      |  |

## Improvement Information

|                     |       |
|---------------------|-------|
| Building Value      | 29403 |
| Extra Feature Value | 0     |
| Bathrooms           | 0     |
| Bedrooms            | 0     |
| Heated Sqft         | 704   |
| Year Built          | 1874  |

## Account Information

|                     |                             |
|---------------------|-----------------------------|
| Owner               | STRATEGIC DESIGN GROUP, LLC |
| Owner Address       |                             |
| Address Line 2      |                             |
| Address Line 3      | P.O. BOX 189                |
| Address Line 4      | RICO                        |
| State               | CO                          |
| Zipcode             | 813320000                   |
| Site Address        | 122 N. GARFIELD ST.         |
| Acres               | 0                           |
| Land Use            | Residential Improved        |
| Tax Area            | 102                         |
| Mill Levy           | 0.075616                    |
| Building Value      | 29403                       |
| Extra Feature Value | 0                           |
| Land Value          | 56000                       |
| Total Value         | 85403                       |
| Assessed Value      | 6149                        |

No certification or accuracy of information is made or implied. Information may be changed without notice. This map is for informational purposes only and is not a legal map. Call 970-677-2385 with any questions.

App Exh 2

167888  
 Page 1 of 3  
 LaRita Randolph, County Clerk & Recorder  
 Dolores County, CO RP \$0.00  
 06-04-2018 02:06 PM Recording Fee \$23.00

### QUITCLAIM DEED

**THIS DEED**, made this 24<sup>th</sup> day of May, 2018, between:

Bishop of Pueblo, a Corporation Sole, whose address is 101 N. Greenwood Ave., Pueblo, CO 81003 (GRANTOR), and

Strategic Design Group, LLC, a Colorado limited liability company, whose address is PO Box 189, Rico, CO 81332 (GRANTEE):

**WITNESS** that GRANTOR, for and in consideration of the sum of Ten and no/100 Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED to GRANTEE, and by these presents does remise, release, sell and QUITCLAIM to GRANTEE, its heirs, successors and assigns forever, all the right, title, interest, claim and demand which GRANTOR has in and to the real property, together with improvements, if any, situate, lying and being in the County of Dolores, State of Colorado, described as follows:

LOTS 31, 32, 33, and 34, Block 24, Town of Rico.

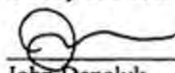
SUBJECT TO the deed restrictions attached as Exhibit A.

County of Dolores  
 State of Colorado

**TO HAVE AND TO HOLD** the same in all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of GRANTOR, either in law or in equity, to the only proper use, benefit and behoof of GRANTEES, their heirs and assigns forever.

**IN WITNESS WHEREOF**, GRANTOR has executed this Quitclaim Deed on the date set forth above.

Bishop of Pueblo



John Daneluk

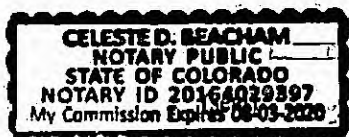
Its: CFO

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF Pueblo )



167888 06-04-2018 Page 2 of 3

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of May, 2018, by John Daneluk, as CFO and Representative of the Bishop of Pueblo, a Corporation Sole.



My commission expires: \_\_\_\_\_

Celeste D. Beacham  
Notary Public  
101 North Greenwood Street  
Address  
Pueblo, CO 81003-3164  
08/03/20

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**BISHOP OF PUEBLO • DEED RESTRICTIONS**

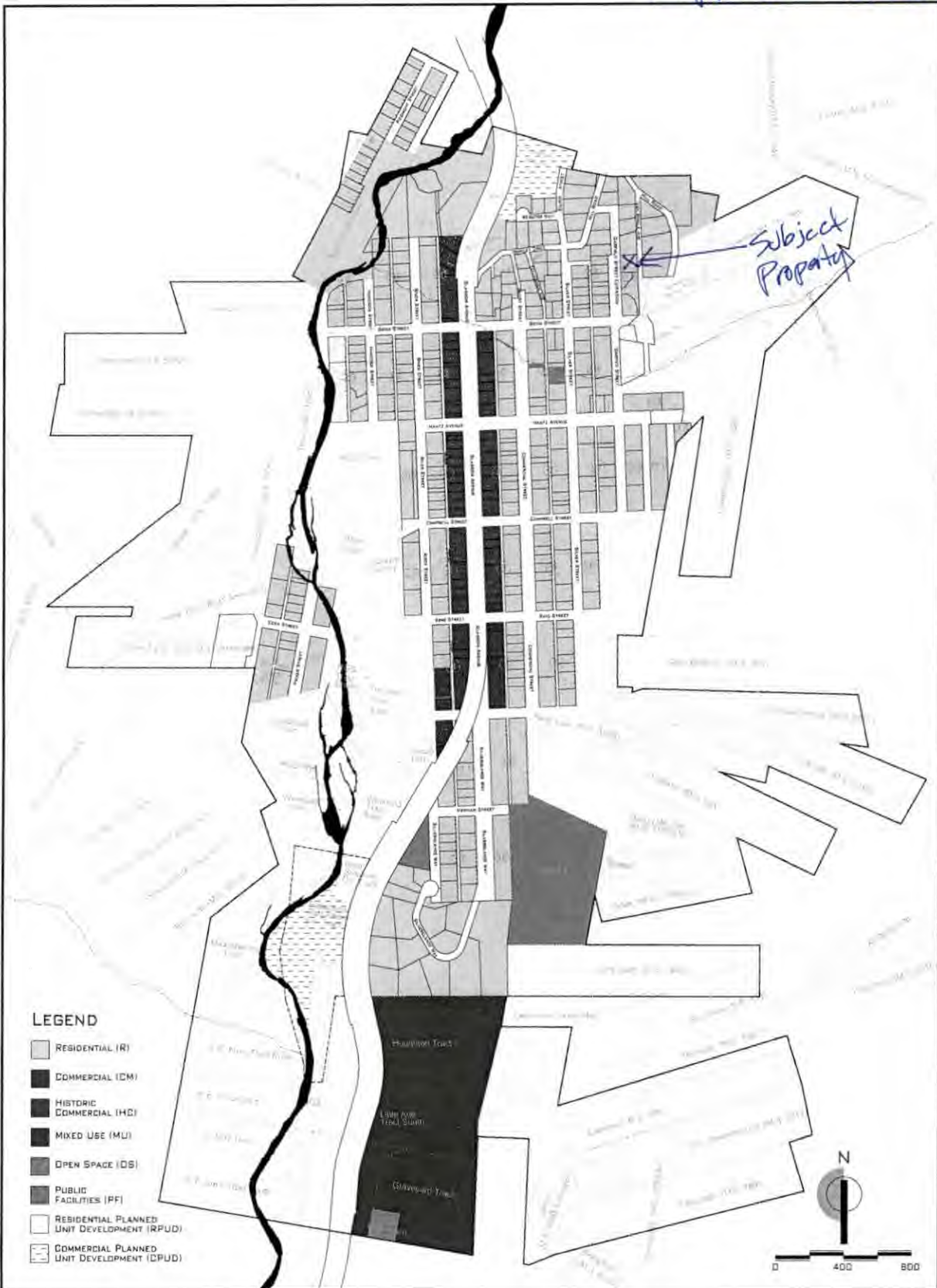
The Grantee, its successors and assigns agrees and covenants that the subject property will not be used for any of the following purposes:

1. A church or similar place for people to meet for religious observances or activities that is promoted or held out as Roman Catholic, but without express approval of the Bishop of Pueblo;
2. An abortion clinic or medical facility that provides abortion services or promotes availability of abortion; a counseling service that supports, recommends, or facilitates abortion; or a political action group or similar organization with a principal policy of advocating for abortion or abortion rights;
3. A clinic or medical facility that provides euthanasia services or promotes euthanasia; a counseling service that supports, recommends, or facilitates euthanasia; or a political action group or similar organization with a principal policy of advocating for euthanasia or euthanasia rights ("euthanasia" includes physician assisted suicide);
4. A clinic or medical facility that provides gender transition services or medication or promotes gender transition; a counseling service that supports, recommends, or facilitates gender transition; or a political action group or similar organization where a principal policy is the advocacy of gender transitioning; or
5. A sexually-oriented business, including but not limited to an adult book store, adult movie theater, strip club or similar sexually oriented cabaret, adult novelty business, topless bar, or any other sexually-oriented establishment.

The foregoing restrictions are separate. If any of them are adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the other restrictions.

Upon application by an interested party, the Grantor may remove the above restrictions with a writing signed by Grantor in its sole discretion. Within sixty days thereafter, the Grantor shall provide its response to interested parties as to whether a proposed use would violate the restrictions ("interested parties" are contract vendees and potential purchasers, including at foreclosure sales).

In the event of breach of any of these deed restrictions, the Grantor, and its successors and assigns, may, after fifteen days written notice to the title holder and the opportunity to cure, terminate the estate conveyed and retake possession of the subject property by sending a second written notice to the Grantor stating that there has been no cure. In such a circumstance, title and all interest in the subject property shall automatically revert to the Grantor. If Grantor is required to initiate court proceedings in order to effect reverter or reacquire possession, it shall, if it prevails, be entitled to attorneys fees and costs.



*Erin Johnson*  
*Attorney at Law, L.L.C.*  
*9 S. Glasgow Avenue, POB 189*  
*Rico, Colorado 81332*  
*303-588-2695*  
*erin@fone.net*

*Application Exh 4*

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May 28, 2019

Kari Distefano  
Rico Town Manager  
PO Box 9  
Rico, CO 81323

RE: Opinion Letter Regarding Title

Dear Kari,

This letter is to assure the Town of Rico that the 122 N. Garfield property is owned by Strategic Design Group LLC, by virtue of a deed recorded on June 4, 2018 at Reception Number 167888 in the office of Clerk and Recorder of Dolores County. A title commitment is currently pending. There are title issues regarding Lot 31 which are being addressed and should be resolved soon. The title issues do not affect Lots 33 or 34 where the restoration and remodel project will occur. As soon as the Lot 31 issues are resolved a title policy can be issued.

There are no outstanding liens or judgments, or easements that will negatively affect title to the property.

Sincerely,



Erin Johnson



**Erin Johnson**  
Attorney at Law, L.L.C.  
9 S. Glasgow Avenue, POB 189  
Rico, Colorado 81332  
303-588-2695  
erin@fone.net

Application Exh 5

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May 28, 2019

Kari Distefano  
Rico Town Manager  
PO Box 9  
Rico, CO 81323

RE: Property Taxes

Dear Kari,

There are currently no property taxes either due or assessed on the 122 N. Garfield property. Record title to the property has been owned by the Bishop of Pueblo since 1991, and as owned by a church, no property taxes were assessed.

The property went into non church owned status in June of 2018. Currently the county assessor is in the process of assessing the property for property taxes from the date of the 2018 sale through the end of 2018, for taxes to become due in the future.

There are no outstanding tax liens negatively affect title to the property.

Sincerely,

  
Erin Johnson

Strategic Design Group  
Erin Johnson, Manager  
9 S. Glasgow Avenue, POB 189  
Rico, Colorado 81332  
303-588-2695  
erin@fone.net

---

May 28, 2019

Kari Distefano  
Rico Town Manager  
PO Box 9  
Rico, CO 81323

RE: 122 N. Garfield Street: Exhibit 6 to Application for Historic Alteration Certificate - Application Narrative

Dear Kari,

1. Introduction. As you are aware, last year I purchased the Catholic Church property from the Bishop of Pueblo. The church is one of Rico's designated historic landmarks as identified in Section 442.6 of the Rico Land Use Code ("LUC") as the Rico Catholic Church. *See attached Exhibit A.* This building was actually the original one room schoolhouse in Rico, put into service in 1880 and used as the Rico School until a larger school was built in 1892.

2. General Development Plan. My plan is to restore the one room schoolhouse while also recognizing the long-term use of the building as the Catholic Church in Rico. It will be remodeled into a residence for my own use. There are four (4) lots in this property, and I would like to build two small rental residences on the southern two lots. I am currently in the planning stages of development plans for a 1,000 - 1,200 square foot 2-bedroom home and an accessory rental unit of 600 square feet. There will be a shared septic system for the two projects. At present the schoolhouse remodel is my top priority, hopefully the rental units can also be started soon.

3. Current Status. The schoolhouse is in a state of serious disrepair and has no foundation. At some point in the past some cinderblock piers were installed under the front section of the building, and these need to be replaced with a real foundation. The front room has been improved to serve as a church, and the back rooms are unimproved. There is an uninstalled water tap with the property, but there is no plumbing in the building. There is no heating system in the building. There is electric service for lighting and outlets which is to code but the service will need to be increased for the remodel. The roof is good and there is no leaking or roof leak damage, but it will be replaced in the remodel. The siding needs to be replaced and other exterior features need repair or replacement.

4. Asbestos. I have had asbestos testing done on the schoolhouse and there were no positive results for asbestos. A copy of the testing report is on file with your office.

5. Alternative Building Materials. I request approval to use steel siding as an alternative building material under LUC 430.1. This siding will be in a traditional clapboard 4" lap in white. I believe the original siding was clapboard painted white. From my research I believe that the schoolhouse has always been painted white, and this is consistent with the typically "frugal" construction methodology for early one room schoolhouses. The steel clapboard siding is more affordable and durable than cedar siding, and will better withstand the harsh winter weather conditions in Rico. Examples of this type of product can be found at [www.edcoproducts.com](http://www.edcoproducts.com). Examples of steel

roofing material that will resemble a cedar shake roof that will be used for this project can also be seen on this website.

6. Side Setback. The north side of the building is about 5 feet from the property line, and the setback for residential use is 7 feet. While the 5 feet is grandfathered under LUC 208, the proposed expansion of the building will render it nonconforming. I request a variance to maintain the existing setback for the remodel and expansion of the building.

There is a small parcel to the north of the schoolhouse property that I believe is unbuildable as an independent parcel. It and the next parcel to the north are owned by Val Truelson. I have talked with Mr. Truelson about purchasing the parcel in order to resolve the setback matter, but to date he has refused all offers from me to purchase the small parcel. Mr. Truelson has assured me that he will allow me to "do whatever is needed" on the small parcel and he is in support of the restoration and remodel project. Mr. Truelson may grant an easement if needed and if it would resolve the matter, but I believe that he prefers to keep the agreement on an informal basis. I plan to continue to make efforts to purchase the small parcel from him, but at present I request a variance to maintain the current setback for the remodel and expansion of the schoolhouse building.

7. Bell Tower. I request approval to open the sides of the bell tower so that the bell (which has to be replaced, it was taken by someone a few years ago) can be exposed. Currently the sides are closed in and I do not believe this was the historical configuration. I also request permission to remove the religious cross from the top of the bell tower so that it is restored to the original school use without a religious cross.

8. Front Deck. When I purchased the building the front deck and the ramp along the side was deteriorated and collapsed. It has been removed for safety reasons. I would like to replace the deck in the same size, and build wide steps off of the south side instead of replacing the ramp. I believe that the ramp was a modern addition. Please see the attached photograph of a similar feature in another restored schoolhouse. *See Exhibit B.* I request approval to replace the deck with the wide steps to the south.

9. Windows and Doors. The window and door trim has a small detail that is believed to be original, and it will be repaired or replaced. The front doors are original and will be repaired or replaced. The windows are newer double-pane but they will be replaced. The back door is metal and will be replaced.

10. Chimney. There was a historic chimney near the back of the front room. This will be replaced so that a usable pot-belly stove can be placed in the front room. I request permission to replace the chimney in the original location.

11. Building Expansion. I have explored various uses for the schoolhouse and have found that due to the location, residential use is the only feasible use. I also looked into moving the structure to a location on Glasgow Avenue for commercial use, but moving the building is also not feasible based on several factors.

In order to maintain and restore as much of the one-room schoolhouse as possible, my plan is to make an open living area in the front room. The back section of the building is about 15 feet by 22 feet, and it is not feasible to incorporate a bedroom, bathroom, and kitchen in this area.

In working with designers and architects, we have identified a plan to "stretch" the building by moving the front section of the building more towards Garfield Street and placing a new section in the middle, between the large front room area and the existing 2 rooms in the back.

This design concept will allow the kitchen, bath, heating and plumbing to be built in an area of new construction. Because the building has to be moved to some extent to build a real foundation under it, it is not a major effort to split the building and insert a new section in the middle.



The new section will have a covered porch that will have a hip roof over the new side entrance to the kitchen area.

12. LUC 443.5 A. This LUC standard of review allows for the repair or restoration of historical architectural features and the removal of non-historic features. This LUC provision applies to the requested modifications regarding the grandfathered setback, steel siding, bell tower, front deck, windows and doors, and the chimney.

13. LUC 443.5 B. This LUC standard of review allows for additions to a historic structure if the addition does not visually detract from the historic structure, particularly the historic facade that faces the public right of way. The proposed expansion is set back from the facade and will be located behind the main front room of the building. The exterior materials for the expanded section will be similar in design to the historic schoolhouse. Additionally, moving the building closer to Garfield Street will make the facade more visible to the public, and the addition will not visually detract from the facade or the general historic character of the building.

14. LUC 443.5 C. This LUC standard of review addresses whether the alteration is necessary to correct unsafe or dangerous conditions of a building. Without a foundation, the building is currently unsafe for any use, and it cannot be remodeled or restored without first building a foundation under it. In order to restore and remodel the front room as a one-room schoolhouse, it is not feasible to incorporate a bedroom, bathroom and kitchen into the current back two rooms. It would destroy the historic character of the front room to place bedroom, bathroom or kitchen facilities in the front room.

From a design standpoint, it would be poor design and of minimal feasibility to place the kitchen and bath in an addition placed at the rear of the building. This would make traffic have to go from the front open living room through the bedroom to get to the kitchen and bath. Additionally, the interior features of the back two rooms cannot be preserved if this area, in its current configuration, is remodeled for kitchen and bathroom uses with a bedroom addition added to the rear of the building.

With regard to all potential new configurations, the building is currently placed near the rear of the lot, and it will have to be moved towards Garfield Street to accommodate any remodel addition. In addition, the building or portions of it need to be moved to build the new foundation under the building.

15. Summary. In summary, several minor modifications as outlined above are requested for the purposes of preserving the historic character of Rico's original one-room schoolhouse in this proposed restoration and remodel project to use the building as a residence, in conformance with the LUC. As stated above, non-residential uses are not feasible at this site. If the requested modifications cannot be approved, the only feasible alternative is to tear down the structure. The destruction of the building is not a desired outcome of the town or the applicant, but if the requested reasonable modifications cannot be approved there will be no feasible alternatives.

A preliminary floor plan design and proposed elevations are attached for purposes of review. *See Exhibit C.* Photographs of the building will be available at the Planning Commission meeting. Construction details associated with the modifications will be refined for review at the building permit stage. It is not feasible to pursue a building permit without the approval of the proposed modifications. Accordingly, the proposed modifications need to be approved in concept, subject to refinement during the building permit stage, in order for it to be feasible to continue with the design effort.

Thank you for your consideration,



Erin Johnson, Manager  
Strategic Design Group LLC



- 441.4** The provision of education opportunities to increase public appreciation of Rico's unique heritage.

**442. DESIGNATION OF HISTORIC LANDMARKS**

- 442.1 Procedure.** A nomination for designation, or revocation of designation, of a Historic Landmark may be made by the Rico Historical Society or by any citizen or property owner in the Town of Rico.
- 442.2 Owner's Consent.** Written consent by the property owner shall be obtained prior to designation of any residential structure in a residential zone district as a Historic Landmark. A property owner's consent shall not otherwise be required for Historic Landmark designation of a structure or building by the Board of Trustees.
- 442.3 Referral.** All nominations for designation or revocation of a designation of Historic Landmark status shall be referred to the Rico Historical Society. Such referral shall include a deadline date for comment as well as the proposed public hearing date.
- 442.4 Public Hearing and Notice.** The Board of Trustees shall conduct a public hearing on a the nomination for Historic Landmark designation not more than seventy (70) days after receiving a nomination. Posted, published and mailed notice to the affected property owner shall be given at least twenty (20) days prior to the date of the hearing. The notice shall contain the time, date, and place of the public hearing and a description of the affected property.
- 442.5 Review.** The Rico Board of Trustees shall decide on nominations to designate, or revoke designation, of structures as Historic Landmarks.
- 442.6 Designated Historic Landmark Structures:** The following structures are designated as Historic Landmark Structures:

Atlantic Cable Headframe Structure – 107 N. Glasgow Ave.  
 Van Winkle Mine Headframe Structure – 100 Van Winkle Ave.  
 Rico Grand Southern Water Tank – R.G.S. Tract North  
 Rico Town Hall/Former Dolores County Courthouse Building – 2 Commercial Street  
 Rico Post Office Building – 22 S. Glasgow Avenue  
 Rico Fire Station Building – 13 S. Glasgow Avenue  
 Rico Community Church – 116 E. Mantz Avenue  
 Rico Catholic Church – 122 N. Garfield Street  
 The Dey Building – 3 N. Glasgow Avenue  
 Rico State Bank Building – 8 S. Glasgow Avenue  
 Rico Masonic Lodge Building – 31 S. Glasgow Avenue  
 The Burley Building – 9 S. Glasgow Avenue  
 The Rhode Inn – 20 S. Glasgow Avenue

(Rico Mercantile – 14 S. Glasgow Avenue)

(The Engel House – 208 E. Mantz Avenue)

#### **443. HISTORIC LANDMARK ALTERATION CERTIFICATE**

- 443.1** Alteration Certificate. No property owner shall carry out or permit to be carried out on a designated Historic Landmark any new construction, alteration, removal, or demolition of a building, structure, or other designated feature without first obtaining a Historic Landmark Alteration Certificate from the Rico Planning Commission as well as obtaining any other permits required by the Town of Rico.
- 443.2** Pending Historic Landmark Designations. No property owner shall receive a permit to construct, alter, remove, or demolish any structure or other feature on a proposed Historic Landmark site when a nomination for Historic Landmark designation is pending.
- 443.3** Application Submittal Requirements. Eleven (11) copies of an application for a Historic Landmark Alteration Certificate shall be submitted to the Town Planner. The application shall include a completed application form; plans, specifications, and architectural designs showing the proposed exterior appearance of the building or structure, such plans and specifications must be at least a scale of one (1) inch equals two (2) feet; a description of proposed exterior materials and textures; and any available historic information relevant to the application and supporting the application.
- 443.4** Review. The Planning Commission shall review applications for Historic Landmark Alteration Certificates with seventy (70) days after the application is received by the Town Planner. The Planning Commission shall hold a public hearing on the application. Notice of the public hearing shall be posted, published, and posted on the structure in a visible location, twenty (20) days prior to the date of the public hearing.
- 443.5** Standards for Review. The Planning Commission shall approve, approve with conditions or deny the application, based on the following standards:
- A.** The alteration would not physically alter the exterior appearance of the historic architectural features, not including: repair or restoration of historical architectural features, the reconstruction of missing portions of the building or structure which historically existed, or removal of non-historic architectural features;
  - B.** The alteration would not create an addition which visually detracts from the historic building or structure; the visual impact of additions can be minimized by using similar design, exterior material, fenestration, and trim material, and by setting the addition back from the façade facing a public right-of-way or constructing the addition on the rear of a structure, or,
  - C.** The alteration is necessary to correct unsafe or dangerous conditions of any building,

structure, or feature, or parts thereof where such condition is declared unsafe or dangerous by the Town or the Rico Fire Protection District.

- D.** The Planning Commission may continue review of an Alteration Certificate application with the consent of the Applicant, to allow for additional information which is necessary to review the application or to allow the Planning Commission and the Applicant to explore acceptable alternative solutions to the original application.

**445. NOTICE OF DECISION.** Notice of the Rico Planning Commission decision shall be published in the next possible edition of the paper of record and posted within five (5) days of the decision. Such notice shall state the decision, along with conditions if any, and the right to appeal to the Board of Trustees with the deadline date to file a written letter of appeal.

**446. APPEAL TO THE BOARD OF TRUSTEES.**

The decision of the Rico Planning Commission may be appealed to the Board of Trustees by the Applicant, any registered voter or any property owner in Town, by filing a written letter appealing such decision with the Town Clerk. Such written letter of appeal shall be filed within twenty (20) days of the Rico Planning Commission decision. Failure to file such an appeal by that date shall be deemed a waiver of any right to appeal or challenge the decision of the Rico Planning Commission and such decision shall be final.

**447. REVIEW BY THE BOARD OF TRUSTEES.**

The Board of Trustees shall hold a public hearing within seventy (70) days after receiving a written letter appeal request. Notice of the public hearing shall be posted, published and mailed to the Applicant at least twenty days (20) prior to the hearing. The Board of Trustees shall approve, approve with conditions or reverse the decision of the Rico Planning Commission based on review of the record, any new information, and comments received at the public hearing.

**470. ROADS BUILDING PROCEDURES AND STANDARDS**

The following sections, and the official Present Road Status Map and the Designated Road Use Map, establish road classifications, use regulations, design standards for new road construction, and procedures for road building permits.

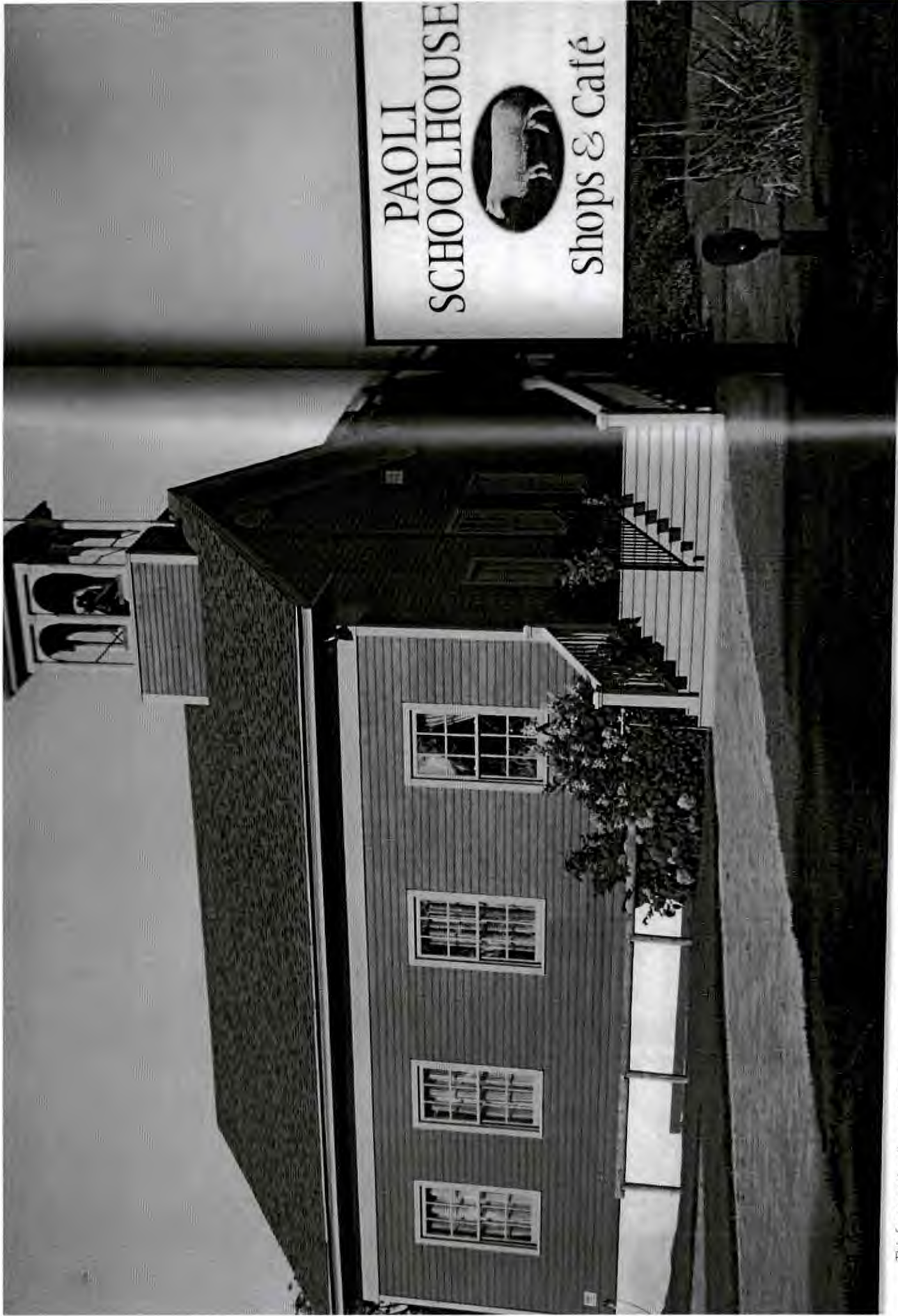
**471. PERMIT REQUIRED**

No road construction shall begin prior to the issuance of a Road Building Permit. No prohibited use of any road shall begin prior to the issuance of a Special Use Permit.

**472. PRESENT ROAD STATUS MAP**

The Town shall maintain a map of all roads currently maintained and accepted by the Town of Rico and all unimproved public road rights-of-way. Such map may identify roads or streets maintained by the County of Dolores, State of Colorado, quasi-governmental entities, or home





This former schoolhouse in Paoli is now a shop and restaurant you can visit.

*Narrative Exh B*

**ORDINANCE NO. 2019-\_\_\_\_**  
**TOWN OF RICO**

AN ORDINANCE OF THE TOWN OF RICO, COLORADO, GRANTING AN  
ELECTRIC POWER UTILITY FRANCHISE TO SAN MIGUEL POWER  
ASSOCIATION, INC.

WHEREAS, on or about July 21, 2004, the Town of Rico, by Ordinance No. 2004-4, granted San Miguel Power Association, Inc. ("SMPA") an exclusive franchise to operate within the municipal boundaries of the Town of Rico, State of Colorado (the "Town"), which franchise expires on July 11, 2019; and

WHEREAS, Article X of the Home Rule Charter of the Town vests in the Board of Trustees authority and discretion to grant franchises for the use of public streets and rights-of-way relevant and necessary for the delivery of public utility services within the Town; and

WHEREAS, SMPA wishes to pursue its in-town operations under the auspices of a duly authorized franchise, all as provided by law; and

WHEREAS, the Town wishes to grant an electric power utility franchise and obtain payment of a franchise fee in consideration for the use by SMPA of those streets, alleys, and other public ways used by SMPA in the distributing and transmitting of electrical energy in the Town;

NOW, THEREFORE, ~~BE IT ORDAINED BY~~ THE BOARD OF TRUSTEES OF THE TOWN OF RICO, ~~COLORADO~~, ORDAINS AS FOLLOWS:

**ARTICLE 1**  
**TITLE AND DEFINITIONS**

- 1.1 This ordinance shall be known and may be cited as the "San Miguel Power Association Franchise Ordinance." It is sometimes herein referred to as this Franchise.
- 1.2 For the purpose of this Franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common and ordinary meaning.
- 1.3 "Board of Trustees" refers to and is the legislative body of the Town.
- 1.4 "Facilities" refer to and are all facilities owned, installed, in the future owned, and in the future installed by SMPA that are reasonably necessary to provide electric service into, within and through the Town, including but not limited to substations, transmission and

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distribution structures, lines, wires, electrical equipment, transformers, underground lines, meters, meter reading devices, control equipment, street lights, wires, cables and poles.

- 1.5 “Franchise Fee” is defined in Section 4.1(B).
- 1.6 “Public Utility Easement” is any easement dedicated on a subdivision plat, dedicated to, or owned or controlled by the Town or dedicated to the public, which is legally available for the Facilities, by its terms.
- 1.7 “PUC” refers to and is the Public Utilities Commission of the State of Colorado or other governmental body succeeding to the regulatory powers of the Public Utilities Commission.
- 1.8 “Residents” refer to and include all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be located, in whole or in part, within the territorial boundaries of the Town.
- 1.9 “Revenues” refer to and mean those gross revenues ~~which~~that SMPA receives from sale of electricity to Residents.
- 1.10 “SMPA” refers to and is San Miguel Power Association, Inc. and is the grantee of rights under this Franchise.
- 1.11 “Streets” refer to and are the rights of way of streets, alleys, viaducts, bridges, roads, lanes, public utility easements, and other public rights-of-way in the Town, excluding any such property ~~which~~that is not legally available for the use thereof by SMPA. “Within the Streets” shall mean upon, above, under, across, along and within ~~said~~such Streets.
- 1.12 “Town” refers to and is the municipal corporation designated as the Town of Rico, Dolores County, Colorado, and is the grantor of rights under this Franchise.

## **ARTICLE 2 GRANT OF FRANCHISE**

### **2.1 Grant of Franchise.**

- (A) The Town hereby grants to SMPA, for the period specified, subject to the conditions, terms, and provisions contained in this Franchise, a non-exclusive right, and SMPA hereby assumes the obligation, to furnish, sell, and distribute electricity to the Town and to all Residents of the Town. Subject to the conditions, terms, and provisions contained in this Franchise, the Town also hereby grants to SMPA a non-exclusive right, and SMPA hereby assumes the obligation, to acquire, construct, install, locate, maintain, operate, and extend into, within and through the Town all Facilities reasonably necessary to furnish, sell, and distribute electricity

within and through the Town. The Town also hereby grants to SMPA a non-exclusive right, and SMPA hereby assumes the obligation, to make reasonable use of the Streets as may be necessary to carry out the terms of this Franchise subject to the Town's prior right of usage for municipal purposes and subject to applicable laws, ordinances, and regulations. These rights and obligations shall extend to all areas of the Town as it is now or hereafter constituted.

- (B) The rights granted by this Franchise are not, and shall not be deemed to be granted exclusively to SMPA, and the Town reserves the right to make or grant a similar franchise to any other person, firm, or corporation as allowed by law.
- (C) The Town retains the right to use, control, and regulate, through the exercise of its police power, the use of the Streets; and the Town retains the right to impose such other regulations as may be determined by the Town to be necessary in the exercise of the police power to protect the health, safety, and welfare of the Town.
- (D) Neither the Town nor SMPA waives any rights under the constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.
- (E) This Franchise constitutes a valid and binding contract between SMPA and the Town. In the event that the Franchise Fee specified herein is declared illegal, unconstitutional, or void for any reason by any court or other proper authority, SMPA shall be contractually bound to collect and pay monthly rental fees to the Town in an aggregate amount that would be, as nearly as practical, equivalent to the amount ~~which~~that would have been paid by SMPA as the Franchise Fee hereunder as consideration for use of the Town's Streets.
- (F) The rights and obligations provided for in this Franchise encompass street lighting service to the Town, and the provisions of this Franchise apply with full and equal force to the street lighting service provided by SMPA.

### **ARTICLE 3 TERM OF FRANCHISE**

- 3.1 Term of Franchise. This Franchise shall take effect upon its adoption and shall supersede the prior Franchise, specifically Ordinance No. 2004-4. Unless terminated prior to the end of the term, or extended past the end of the term, in accordance with other provisions as contained herein, the term of this Franchise shall be for fifteen (15) years.

### **ARTICLE 4 FRANCHISE FEE**

- 4.1 Franchise Fee.

- (A) In consideration for the Franchise rights granted herein, which provide, among other things, for SMPA's use of the Streets, which are valuable public properties acquired and maintained by the Town at great expense to its Residents, and in recognition that the grant to SMPA of the use of those Streets, and of the right to provide service to the Town's Residents, are valuable rights, SMPA shall collect and pay the Town the sums provided in this Section. Except as specified in this Franchise, payment of the Franchise Fee shall not exempt SMPA from any other lawful taxes or fees; however, the Franchise Fee provided for herein shall constitute the exclusive monetary payment by SMPA to the Town for SMPA's use and occupancy of the Streets except as specifically provided herein.
- (B) SMPA shall collect and pay to the Town a Franchise Fee of two percent (2%) of Revenues.
- (C) A transaction or arrangement between SMPA and any third party ~~which~~that has the effect of circumventing payment of the Franchise Fee or evasion of payment of the Franchise Fee by non-collection, non-reporting, or any other means which evade the actual collection of Revenues by SMPA is prohibited.
- (D) No acceptance of payment by the Town from SMPA shall be construed as an agreement that the amount paid is the correct amount, nor shall acceptance be construed as a release of any claim of which the Town may have for additional sums due and payable under this Franchise.

4.2 Remittance Schedule. SMPA shall remit the Franchise Fee to the Town quarterly within sixty (60) days of each calendar quarter. All payments shall be made to the Town. In the event that either the Town or SMPA discovers that there has been an error in the calculation of the Franchise Fee, the error shall be corrected in the next quarterly payment; except that, in the event an error by SMPA results in an overpayment of the Franchise Fee to the Town, and ~~said~~such overpayment is in excess of Five Thousand Dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is less than Five Thousand Dollars (\$5,000.00), credit shall be taken against the next payments. In no event shall the Town be required to refund any overpayment made as a result of a SMPA error ~~which~~that occurred more than three (3) years prior to the discovery of SMPA error. Underpayments shall be subject to one and one-half percent (1 ½ %) interest per month until paid in full.

4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by SMPA is accepted by the Town in lieu of any utility occupation tax or any rental fee for SMPA's use or occupation of the Streets, or for the installation, operation and maintenance of the Facilities. Payment of the Franchise Fee does not exempt SMPA from any other lawful tax or fee, including any fee for an excavation permit, street cut permit, or similar requirement, or sales and use taxes and general *ad valorem* property taxes.



**ARTICLE 5  
MODIFICATION OF FRANCHISE FEE**

- 5.1 Change of Franchise Fee. In the event legislative or regulatory changes result in a significant change in the Franchise Fee, SMPA and the Town agree to modify the computation of the Franchise Fee in accordance with Section 16.2.
- 5.2 Change of Franchise Fee. Once during each calendar year of the Franchise term the Town, upon giving ninety (90) days' notice to SMPA of its intention to so do, may review and prospectively change the Franchise Fee. If the Town decides the Franchise Fee shall be changed, it shall provide for such change by ordinance. SMPA shall report to the Town within sixty (60) days of the execution of a subsequent franchise or of any change of an existing franchise, which increases the franchise fee in any other municipality to which SMPA supplies electric service.

**ARTICLE 6  
DISCLOSURE OF RECORDS**

- 6.1 Town Information Rights.
- (A) The Town, or its designated representative or agent, shall have access to the books and records of SMPA during normal business hours upon reasonable notice for the purpose of ascertaining compliance with the terms of this Franchise. The Town may use such information for the purposes of enforcing its laws, ordinances, and regulations. Nothing herein shall exempt SMPA from any other requirements regarding the production of information as provided in the laws, ordinances and regulations of the Town.
- (B) To the extent allowable by law, SMPA shall supply the Town with all of the following information annually without cost to the Town:
- (1) Annual reports, including but not limited to, its annual report to its consumers; and
  - (2) Annual financial summaries of the Revenues during the previous year; and
  - (3) SMPA shall prepare and submit to the Town a map showing the location of its system, showing location, size and depth of lines, incident to the distribution system, so far as such Facilities can reasonably be projected. The map shall be updated annually and shall be delivered to the Town Clerk's office with ten (10) days of written request by the Town. If SMPA fails to keep such map current and provide the required information, the Town can cause such work to be done and charge all cost thereof to SMPA. SMPA shall also submit the map on digital media. Such map may not be

used for facility engineering or design purposes, and shall not take the place of formal line locates ~~which~~that shall be provided by SMPA upon request.

- (C) To the extent allowable by law, SMPA shall supply the Town with all of the following information upon written request:
- (1) Copies of the official minutes of Board of Directors meetings for the previous year; and
  - (2) A summary of conversions and replacements within the Town ~~which~~that have been accomplished or are underway by SMPA, if applicable; and
  - (3) SMPA's plans for additional conversions and replacements within the Town, if applicable; and
  - (4) Copies of tariffs including but not limited to all tariffs, rules, regulations, and policies relating to service by SMPA to the Town and its Residents; and
  - (5) Copies of supporting documentation for the calculation of the Franchise Fee; and
  - (6) An inventory of Facilities within the Town; and
  - (7) Annual and long-term reports for capital improvements planned within the Town.

## **ARTICLE 7 RATES**

- 7.1 General Provisions. Rates charged by SMPA for service hereunder shall be fair and reasonable. SMPA agrees that it shall be subject to all authority now or hereafter possessed by any regulatory body having jurisdiction to fix just, reasonable, and compensatory electric rates. SMPA further agrees that the system shall be so designed, constructed, and sources of electricity utilized as to provide the most economic development and favorable rate structure possible, taking into account deliverability of electricity, economics, load profiles, and other pertinent conditions.
- 7.2 Comparable ~~R~~ates. For each rate category within SMPA's service area, rates charged to Residents shall be no higher than the lowest rates charged to SMPA's customers in the same rate category, excluding franchise fees, other fees collected pursuant to this Franchise and other taxes, if applicable.
- 7.3 Rates ~~a~~pplicable to Street Lighting and Town-~~e~~Owned ~~F~~acilities. Rates charged to the Town by SMPA for street lighting and Town-owned facilities shall be no higher than the

lowest rates charged to SMPA's customers for the same rate category, excluding franchise fees, other fees collected pursuant to this Franchise and other taxes, if applicable.

## **ARTICLE 8 CONSTRUCTION AND DESIGN**

### **8.1 Reliability.**

- (A) SMPA shall at all times take all reasonable and necessary steps to assure the adequate supply and distribution of electricity to the Town and its Residents at the lowest reasonable cost. In addition, SMPA shall operate the Facilities pursuant to the highest practicable level of service quality and reliability in providing electricity to the Town and its Residents. SMPA recognizes that maintaining service reliability is a substantial obligation under this Franchise. Upon the Town's request, SMPA will provide the Town copies of service reliability reports.
- (B) If the distribution of electricity to the Town or Resident is interrupted, SMPA shall take all necessary and reasonable actions to restore such distribution in the shortest practicable time. If the distribution of electricity is to be interrupted due to a planned outage, except in cases of emergency outage repair, SMPA shall take adequate reasonable efforts to notify the Residents and the Town in advance. SMPA shall keep on file in its public offices copies of its Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies concurrently in effect or filed with the PUC or other competent authority having jurisdiction, which copies shall be made available to the Town and its Residents.
- (C) SMPA shall provide to the Town telephone numbers of SMPA's dispatch center that will permit the Town to obtain status reports from SMPA on a twenty-four (24) hour basis concerning interruptions of the distribution of electricity in any portion of the Town.

### **8.2 Obligations Regarding Facilities.**

- (A) All work by SMPA shall be done in accordance with standards set by the Rural Utilities Service, United States Department of Agriculture.
- (B) The installation, repair, or maintenance of the Facilities shall not interfere with water facilities, sanitary or storm sewer facilities, communication facilities, or other uses of the Streets. Interference with landscaping and other natural features shall be minimized.
- (C) SMPA shall promptly repair all damage to non-SMPA property caused by SMPA activities or the Facilities. If such damage poses a threat to the health, safety, or

welfare of the public or individuals, the Town may cause repairs to be made, and SMPA shall promptly reimburse the Town for the cost of such repairs.

- (D) All non-electrical work is subject to inspection by the Town and a determination by the Town that ~~said~~such work has been performed in accordance with all applicable laws, ordinances, and regulations of the Town. SMPA shall promptly perform reasonable remedial action required by the Town pursuant to any such inspection. It shall be a condition of the Town's approval that, for any Facility installed, renovated, or replaced after the effective date of this Franchise, SMPA shall provide the Town with as-built drawings of each such Facility in such formats and providing such details as reasonably requested by the Town. Such drawings may not be used for facility engineering or design purposes, and shall not take the place of formal line locates ~~which~~that shall be provided by SMPA upon request. Qualified Town personnel may inspect electrical work.
- (E) The installation, renovation, and replacement of any Facilities in the Streets by or on behalf of SMPA shall be subject to inspection and approval by the Town as to location. Such inspection and approval may include, but not be limited to, the following matters: location of Facilities in Streets; cutting and trimming of trees and shrubs; disturbance of pavements, sidewalks, and surfaces of Streets.
- (F) SMPA and all of its contractors shall comply with all applicable Town laws, ordinances, and regulations. SMPA shall require its contractors working in the Streets to hold the necessary licenses and permits required by the Town and other entities having jurisdiction.
- (G) SMPA shall provide, when available, as-built drawings in digital formats and providing such details as reasonably requested by the Town, of each Facility. Such drawings may not be used for facility engineering or design purposes, and shall not take the place of formal line locates ~~which~~that shall be provided by SMPA upon request.

8.3 Excavation and Construction. SMPA shall be responsible for obtaining all applicable permits, including any excavation, encroachment, or street cut permits, in the manner required by the laws, ordinances, and regulations of the Town. All public and private property whose use conforms to restrictions in public easements disturbed by SMPA construction or excavation activities shall be restored by SMPA at its expense to substantially its former condition according to then existing Town laws, ordinances, and regulations.

8.4 Location and Relocation of Facilities.

- (A) Except as located as of the date of this Franchise, the location of Facilities shall be subject to the prior approval of the Town, shall be located to maximize the potential

use of the right of way by the Town, minimize interference with the Town's existing use and facilities, and conform to requirements of Town standards and specifications.

- (B) If at any time the Town requests SMPA to relocate Facilities, in order to allow the Town to make any use of Streets, or if at any time it shall become necessary or convenient, because of a change in the grade, by reason of the improving, repairing, constructing, or maintaining of any Streets, by reason of traffic conditions, or public safety, or by reason of installation of any type of Town utility facilities, project or other improvement, to move or change Facilities within or adjacent to Streets in any manner, either temporarily or permanently, the Town shall endeavor to notify SMPA at least ninety (90) days in advance, except when impractical or in the case of emergencies, of the Town's intention to perform or have such work performed. SMPA shall thereupon, at its cost, accomplish the necessary relocation, removal or change within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date the Town has notified SMPA that it intends to commence its work or immediately in the case of emergencies. Upon SMPA's failure to accomplish such work, the Town may perform such work at SMPA's expense and SMPA shall reimburse the Town within thirty (30) days after receipt of a written invoice therefore. Following relocation, all property negatively impacted by the activities of SMPA shall be restored to, at a minimum, the condition which existed prior to construction by SMPA at SMPA's expense, and revised as-built plans submitted to the Town.
- (C) The Town may require the relocation of Facilities ~~which~~that are improperly installed in a location different from that approved by the Town following the procedures set out in (B) above.
- (D) When requested by the Town or SMPA, representatives of the Town and SMPA shall meet to share information regarding anticipated Town projects that will require relocation of Facilities. Such meetings shall be for the purpose of providing both parties the opportunity to, in good faith, evaluate reasonable alternatives and/or cost saving measures in an attempt to minimize the fiscal impact upon SMPA from the proposed relocation, and establish timetables with anticipated commencement and completion dates.
- (E) Following relocation, all property negatively impacted by the activities of SMPA shall be restored to substantially its former condition by SMPA at its expense, in accordance with then existing Town laws, ordinances, and regulations.
- (F) Relocated Facilities shall be underground, unless exempted pursuant to Article 12 of this Franchise. The Town will not require relocation solely to cause the undergrounding of Facilities.

(G) SMPA may recover costs it incurs for relocation or undergrounding of Facilities when the work was ordered by the Town pursuant to Section 8.4(B) or Section 12.1(B)(3), through an increase in the Franchise Fee that is retained by SMPA instead of being paid to the Town (the "Recovery"). The Recovery shall be amortized over five years without interest, or a longer or shorter period as is appropriate to avoid increases in excess of ten percent (10%) of electric bills. SMPA shall consult with the Town concerning an appropriate Recovery schedule but the final decision shall be SMPA's. When the remaining term of this Franchise is insufficient to accommodate a reasonable amortization period, collection of the increase in the Franchise Fee shall be automatically extended to encompass the Recovery schedule. SMPA shall provide the necessary financial records to the Town to allow it to monitor the Recovery. Upon receipt of an order from the Town to relocate or underground Facilities, SMPA shall provide a good faith estimate of the cost of such relocation or undergrounding ("Cost"). If the estimated Cost, plus the outstanding balance of any prior Recoveries, exceeds fifty-thousand dollars (\$50,000.00), the Town agrees to pay the amount in excess of fifty-thousand dollars (\$50,000.00). If the actual Cost causes the balance of total Recoveries to exceed fifty-thousand dollars (\$50,000.00), the Town shall not be responsible for such excess, and the Recovery shall include such excess.

(H) SMPA shall report to the Town within sixty (60) days of the execution of a subsequent franchise, or of any change of an existing franchise, with any other municipality to which SMPA supplies electric service ~~which~~that includes terms that are more favorable to the Town than this Section.

8.5 Service to New Areas. If the boundaries of the Town are expanded during the term of this Franchise, SMPA shall extend service to Residents in the expanded area at the earliest practicable time and in accordance with SMPA's extension policy. Service to the expanded area shall be in accordance with the terms of this Franchise, including payment of Franchise Fee.

8.6 Town Not Required to Advance Funds. Upon receipt of the Town's authorization for billing and construction, SMPA shall extend its Facilities to provide electric service to the Town for municipal uses within the Town limits or for any major municipal facility outside the Town limits, and within SMPA certificated service area, without requiring the Town to advance funds prior to construction. Upon completion, the Town shall pay invoice within thirty (30) days of receipt.

8.7 Technological Improvements.

(A) SMPA shall generally introduce and install, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and the Residents.

- (B) While maintaining flexibility in the provision of services, SMPA's system shall, at all times, be no less advanced than any other system operated by SMPA within SMPA's service area, taking into account deliverability of electricity, economics, load profiles, and other pertinent conditions; provided, however, should an upgrade of the utility services provided to Residents be requested by the Board of Trustees, SMPA shall have the right to meet, confer, and negotiate with the Town concerning the economic practicality of such an upgrade, giving due consideration to the remaining term of the Franchise and other reasonable incentives. SMPA shall submit to the Town related information upon the Board of Trustee's request, including, but not limited to, a plan for provision of such services, or a justification indicating the reason such services are not feasible for Residents. SMPA retains the right to make the final decision as to the technological improvements or upgrades made by SMPA.
- (C) The provisions of this Franchise apply specifically to electric services. Nothing in this Franchise precludes SMPA from engaging in any other lawful activities that are not subject to franchise ordinances.

8.8 Renewable Power. SMPA will continue with its efforts to promote power from renewable sources within the Town and will make power from renewable sources available for purchase to Town and its Residents, to the extent power from renewable sources is available to SMPA.

## **ARTICLE 9 COMPLIANCE**

- 9.1 Town Regulation. The Town expressly reserves, and SMPA expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such laws, ordinances, and regulations deemed necessary by the Town in the exercise of its taxation power and its police power for the protection of the health, safety, and welfare of its citizens. SMPA shall comply with all applicable laws, ordinances, and regulations of the Town, including but not limited to all Town building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities.
- 9.2 Compliance with Town Requirements. SMPA shall comply with all Town ordinances and regulations during the term of this franchise. The Town ~~Director of Public Works~~ Manager shall be the Town's agent for inspection and for compliance with Town ordinances and regulations.
- 9.3 Town Review of Plans. Prior to construction of any significant Facilities such as transmission lines and substations within the Town, or of a building or other structure within the Town, SMPA shall furnish to the Town the plans and a description of the

proposed location of such Facilities, building, or structure. In addition, upon request by the Town, SMPA shall assess and report on the impact of its proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ensure that all applicable laws, including building and zoning codes and air and water pollution requirements, are met, that aesthetic and good planning principles have been given due consideration, and that adverse impact on the environment has been minimized. SMPA shall comply with all regulatory requirements of the Town.

- 9.4 Inspection. The Town shall have the right to inspect, at all reasonable times, any portion of SMPA's electric system used to serve the Town and its Residents. SMPA agrees to cooperate with the Town in conducting the inspection to correct any safety issues affecting the Town's interest in a prompt and efficient manner. ~~Said~~Such inspection shall be performed only by qualified inspectors working under a professional engineer's license.
- 9.5 Taxation Recovery. In the event the Town exercises its taxation power in a manner that taxes SMPA's electric system used to serve the Town and its Residents, SMPA may recover costs it incurs as a result through an increase in the Franchise Fee that is retained by SMPA instead of being paid to the Town.

#### **ARTICLE 10 USE OF FACILITIES**

- 10.1 Town Use. The Town shall be permitted to make all reasonable use of SMPA's underground conduits, distribution poles and street lighting poles for any Town purpose so long as such use complies with appropriate safety codes including SMPA's safety regulations. Said use shall be without cost to the Town so long as such use does not unreasonably interfere with SMPA's use or future use of such Facilities or create a hazard. The Town shall be responsible for all costs, including maintenance costs, associated with any modifications to such Facilities to accommodate the Town's use of such Facilities.
- 10.2 Non-Competitor's Use. SMPA shall allow telecommunications companies and/or cable companies who hold a franchise or encroachment permit from the Town to utilize SMPA's distribution poles and other suitable overhead structures or underground conduits for the placement of their facilities based upon SMPA's joint use agreements, so long as such terms and conditions are not inconsistent with SMPA's obligations under this Franchise. SMPA shall not be required to assume any liability nor to be put to any additional expense in connection with any such use; nor be required to permit any such use for the distribution of electricity. No such use shall be required if it would constitute a safety hazard or would unreasonably interfere with SMPA's use of the same.
- 10.3 Competitor's Use. If SMPA chooses, or is required by law, to transport electricity supplied by other entities over the Facilities to Town Residents, such transportation shall not be prohibited under this Franchise. SMPA shall periodically report to the Town a list of all entities for which SMPA is providing such transport services, and to the extent allowable



by law the names and addresses of each such entity and each Town resident to whom electricity is transported, and the amount of electricity transported by SMPA for each such entity. Nothing in this Franchise shall preclude the Town from collecting from such entities or Residents all applicable taxes and fees required by the Town's laws, ordinances, and regulations.

- 10.4 Emergency Use. In the case of any emergency or disaster, SMPA shall, upon reasonable request of the Town, cooperate and upon mutual consent, make available its Facilities for emergency use. For purposes of this section, the terms "emergency" or "disaster" shall be defined as any period of time declared an emergency or disaster by appropriate Federal or State agencies. Such use of Facilities shall be of a limited duration and will only be allowed if the use does not interfere with SMPA's own use of Facilities occasioned by such emergency or disaster. Such use of Facilities shall comply with all safety rules and regulations of SMPA. Notwithstanding the terms of Section 11.1 (B), the to the extent allowable by law, Town agrees to hold harmless SMPA, its officers, employees, and insurers, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with such use, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Town, any subcontractor ~~of~~ the Town, or any officer, employee, representative of the Town, or which arise out of any worker's compensation claim of any employee ~~of~~ the Town or of any employee of any subcontractor of the Town. The Town agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Town, or at the option of SMPA, agrees to pay SMPA or reimburse SMPA for the reasonable defense costs incurred by SMPA in connection with any such liability claims or demands. The Town also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability claims or demands alleged are groundless, false, or fraudulent. SMPA understands and acknowledges that it has been advised that Colorado law does not currently enforce indemnity clauses entered into by Colorado local governments in contracts. The Town is a Colorado local government and is not providing any assurance or warranty that the indemnification provided herein would be enforced in any Colorado court or in any proceeding under Colorado law. The obligation of this section shall not extend to any injury, loss, or damages to the extent it is caused ~~solely~~ by the act, omission, error, professional error, mistake, negligence, or other fault of SMPA, its officers, or its employees.

- 10.5 Trenches Available for Town Use. The Town and SMPA agree that it is in the best interest to the community to share and combine facilities in common trenches, ductways, or conduits. SMPA and Town hereby agree to work together to see that facilities are combined to minimize impacts to the community.

- 10.6 Underground Conduit. If SMPA installs new electric underground conduit or opens a trench or replaces such conduit, SMPA shall provide adequate advance notice of such activity to permit additional installation of similar conduit and pull wire for the Town and other overhead users at their cost. If the Town desires to have additional similar conduit and pull wire for its use, it will so notify SMPA and provide similar conduit and pull wire to SMPA at the Town's expense. SMPA agrees to install such conduit and pull wire for the Town, and the Town shall pay the prorated amount of SMPA's actual cost attributable to installing the Town's conduit and pull wire. "Actual cost" shall not include SMPA's cost of opening and closing the trench. SMPA shall not be liable for any damage for this conduit and pull wire subsequent to successful installation.

#### **ARTICLE 11 INDEMNIFICATION OF THE TOWN**

11.1 Town Held Harmless.

- (A) SMPA agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Franchise, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of SMPA, any subcontractor or SMPA, or any officer, employee, representative of SMPA, or which arise out of any worker's compensation claim of any employee or SMPA or of any employee of any subcontractor of SMPA. SMPA agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of SMPA, or at the option of the Town, agrees to pay the Town or reimburse the Town for the reasonable defense costs incurred by the Town in connection with any such liability claims or demands. SMPA also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability claims or demands alleged are groundless, false, or fraudulent. The obligation of this paragraph shall not extend to any injury, loss, or damages to the extent it is caused solely by the act, omission, error, professional error, mistake, negligence, or other fault of the Town, its officers, or its employees.
- (B) SMPA hereby waives any claim for damages to its Facilities against the Town, its officers and employees, except for damages caused by the negligence, recklessness, or the specific intent of the Town, its officers, employees, representatives or contractors.
- (C) SMPA agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other

obligations assumed by SMPA pursuant to paragraph. Such insurance shall be in addition to any other insurance requirements imposed by this Franchise or by law. Evidence of qualified self-insurance status may be substituted for the insurance required by this paragraph. SMPA shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to paragraph (A) by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

- (D) SMPA shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover liability claims, demands, and other obligations assumed by SMPA pursuant to paragraph (A). In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- (1) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Franchise, and employers' liability insurance with minimum limits of five hundred thousand dollars (\$500,000.00) each accident, five hundred thousand dollars (\$500,000.00) disease-policy limit, and five hundred thousand dollars (\$500,000.00) disease-each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.
  - (2) Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) aggregate. The policy shall be applicable to premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
  - (3) Comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of SMPA's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If SMPA has no owned automobiles, the requirements of this paragraph shall be met by

each employee of SMPA providing services to the Town under this Franchise.

- (E) The policy required by paragraphs (D)(2) and (3) above shall be endorsed to include the Town and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by SMPA. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. SMPA shall be solely responsible for any deductible losses under any policy required above.
- (F) The certificate of insurance provided to the Town shall be completed by SMPA's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to any commencement of the Franchise. No other form of certificate shall be used. The certificate shall identify this Franchise and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. The completed certificate of insurance shall be sent to the Town.
- (G) Failure on the part of SMPA to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Franchise after the Town has provided SMPA written notice of the failure, and sixty (60) days thereafter to cure any failure to procure or maintain policies. Thereafter, if SMPA has failed to cure, the Town may terminate this Franchise, or at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by SMPA to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to SMPA from the Town. Termination of this Agreement will not affect the collection of applicable surcharges imposed pursuant to the provisions of Section 8.4(G).
- (H) The parties hereto understand and agree that the Town ~~is relying~~ relies on, and does not waive or intend to waive by any provision of this Franchise, the monetary limitations (presently \$330,000.00 per person and \$990,000.00 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*, as from time to time amended, or otherwise available to the Town, its officers, or its employees.

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(I) The indemnification hereby extended shall include delay damages as that term is used in C.R.S. § 24-91-103.5 *et seq.*, as amended from time to time, or any successor law thereto, awarded against the Town in favor of contractors for damages incurred by contractors for delays experienced in the performance of public works contracts entered into with the Town; provided, however, that ~~said~~such indemnification shall extend only to those delays in performance of public works contracts for which SMPA either agrees it is responsible or which were caused as the result, in whole or in part, of the acts or omissions of SMPA in the performance of its obligations under this Franchise. Unless SMPA otherwise agrees in writing, in no event shall SMPA be required to indemnify the Town for any delay damages awarded against the Town unless and until a final determination has been made by a court of competent jurisdiction that the delay damages suffered by a contractor were the result of the acts or omissions of SMPA acting on behalf of or within the Town's control. Nothing herein shall be construed as an acknowledgment by the parties that SMPA, in exercising its rights and obligations under this Franchise, is an entity controlled by, subject to the control of or acting on behalf of the Town for the purposes of C.R.S. § 24-91-103.5, *et seq.*

(J) ~~In the event of litigation for a breach of this Franchise or for an interpretation of this Franchise, the prevailing party shall be reimbursed for all costs related thereto, including reasonable attorney's fees by the non-prevailing party.~~

11.2 Financial Responsibility. At the time of approval of this Franchise by the Town, and from time to time at the Town's request, but not more frequently than annually, SMPA shall submit to the Town, as a confidential document, proof of its ability to meet its obligations under this Franchise, including its ability to indemnify the Town as required by this Article. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. SMPA shall supply the Town with a list of its insurance companies with the types of coverage, but not levels of insurance. ~~Said~~Such list shall be kept current by annual revisions as of January 1 during the term of Franchise. The Town may require, from time to time, and SMPA agrees to provide, additional reasonable funding of SMPA's indemnification obligations as a self-insured, if SMPA is acting as a self-insurer. The Town, its officers, and its employees, shall be included as additional insureds as respects this Franchise on each liability or excess liability policy maintained by SMPA.

11.3 Payment of Expenses Incurred by Town in Relation to this Franchise. SMPA shall pay in advance or reimburse the Town for its publication costs associated with this Franchise.

## ARTICLE 12 UNDERGROUNDING OF OVERHEAD FACILITIES

12.1 Undergrounding of Facilities.

(A) (1) All new or relocated Facilities, other than minor relocation of one or two poles, involving the use of poles or above ground wires are hereby prohibited within the Town, including within highway rights of way controlled by the Colorado Department of Transportation. All such Facilities shall be installed underground. This provision shall not apply to transmission lines when the Board of Trustees, after notice and hearing, as appropriate in its sole discretion, has approved a new or relocated route, with or without conditions.

(2) Existing above ground electric lines, wires and cables may be repaired or replaced overhead on existing poles, but additional wires, lines or cables shall be placed underground.

(3) Existing poles may be repaired or replaced with poles of a similar or smaller size, unless three (3) or more poles in a line are to be replaced or relocated in which case all related Facilities shall be constructed substantially underground.

(4) These provisions shall apply on public or private property. SMPA is encouraged, but not required, to install conduit with space available for rental to other parties, or to rent available conduit space from the Town or others rather than construct new excavations.

(B) Existing overhead Facilities may be converted to underground locations in any of the following alternative manners:

(1) Pursuant to the procedures of C.R.S. §§ 29-8-101 *et seq.*

(2) When ordered by the Town where the Town is willing to pay and assume the cost of conversion.

(3) When ordered by the Town in connection with incidental and episodic conversions associated with public improvements, such as street widening, sidewalk construction and utility construction, at the cost of SMPA subject to the provisions of Section 8.4.

(C) The Board of Trustees may grant a variance from the undergrounding requirements of subsection (A) above if it finds, following a hearing with published notice thereof, that the following criteria are met:

(1) (a) The relocation of existing poles and overhead wires was ordered by the Town pursuant to subsection 8.4(B), but the Town has not ordered undergrounding pursuant to subsection 8.4(B)(3), and the new location is not substantially different than the existing location; or

(b) An existing 44kv or larger electrical transmission line is being relocated to mitigate a significant safety hazard; or

(c) Undergrounding is impractical because of technical issues or unreasonable interference posed by other existing underground utilities and structures in the available ROW;

and

(2) The location of the Facilities is consistent with Section 8.4 and will be consistent with the public health, safety and welfare.

- 12.2 Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and SMPA shall coordinate with other utilities or companies ~~which~~that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, SMPA shall cooperate with these utilities and companies and undertake to underground Facilities as part of the same project where feasible. All parties shall pay their own costs associated with such projects.
- 12.3 Review and Planning for Undergrounding Projects. The Town and SMPA shall mutually plan in advance the scheduling of approved undergrounding projects to be undertaken according to this Article as a part of the review and planning for other SMPA construction projects. The Town and SMPA agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. SMPA agrees to use due diligence to see that approved undergrounding projects are, to the extent reasonably practicable, completed prior to the expiration of this Franchise.

### **ARTICLE 13 TRANSFER OF FRANCHISE**

- 13.1 Consent of Town Required. SMPA shall not sell, re-sell, transfer, assign or convey any rights under this Franchise, or the Facilities, to any third party, including any merger with such third party, nor undergo any corporate reorganization or other change ~~which~~that would result in any modification of SMPA's obligations under this Franchise, without first obtaining written approval of the Town; provided, however, that this condition shall not be construed to restrict or prevent the issuance of bonds, debentures, or other evidence of indebtedness, or the issuance of additional stock, needed or useful for the purpose of financing the system or any portion thereof. Should SMPA violate the terms of this Section without the proper approval, the Town may revoke this Franchise. Upon revocation, all rights and interests of SMPA under this Franchise shall cease. In addition, any sale, re-sale, transfer, assignment, or conveyance in violation of this Section shall be null and void and unenforceable.

### **ARTICLE 14 MUNICIPALIZATION**

- 14.1 Town's Right to Purchase or Condemn.
- (A) The right of the Town to construct, purchase, or condemn any public utility works or ways, and the Facilities and rights of SMPA in connection therewith, as provided by the Colorado Constitution and statutes, is hereby expressly reserved, and may be exercised by the Town in accordance with such statutes.
  - (B) SMPA understands and agrees that the right of the Town to construct, purchase, or condemn any public utility works or ways, and the Facilities and rights of SMPA



in connection therewith, as provided by the Colorado Constitution and the Town's home rule charter, are hereby expressly reserved, and that such right may be exercised at any time by the Town.

- (C) In the event the Town exercises its option to purchase or condemn, SMPA agrees that it will continue to maintain its Facilities and to supply any service it supplies under this Franchise, in whole or in part, at the Town's request, and at the Town's cost, for up to a twenty-four (24) month period after the Town has either purchased or condemned Facilities or alternative arrangements have been made. Both parties will exercise due diligence to wind up the affairs as soon as practical.
- (D) SMPA shall cooperate with the Town by making available such records as will enable the Town to evaluate the feasibility of acquisition of the Facilities. SMPA shall not be required to conduct studies or accrue data without reimbursement by the Town, but shall make such studies if reimbursed its costs for the same. SMPA shall take no action which could inhibit the Town's ability to effectively or efficiently use the acquired Facilities.

14.2 Negotiated Purchase Price or Condemnation Award. If the Town desires to purchase the Facilities and if SMPA desires to sell the Facilities, the parties shall negotiate in good faith for up to ninety (90) days to determine a mutually acceptable purchase price; ~~said~~such purchase price shall exclude the value of this Franchise. If agreement is not reached, the Town and SMPA reserve all rights to assert their respective positions with respect to the steps the Town would need to take to condemn the Facilities; however, no award shall be made for the value of the Franchise.

14.3 Town-Produced Electricity. SMPA understands and agrees that the Town expressly reserves the right to obtain or produce electricity for its own purposes and wholesale transactions, and the Town may exercise that such right at any time. SMPA shall not curtail wholesale purchases of Town generated electricity. The Town expressly reserves the right to engage in the production of electricity. If the Town does so, SMPA agrees to negotiate in good faith for the purchase thereof in accordance with its tariffs and applicable PUC rules and regulations, but only within the limits of SMPA's then existing contractual limitations. Alternatively, SMPA agrees to transmit the Town generated power between the generation unit and designated end point to the extent that such transmission is feasible within the then existing system of SMPA. SMPA may charge for such transmission a just and reasonable rate calculated on the basis of the Facilities actually used by SMPA to provide this service

14.4 Purchase of Real Property of SMPA by Town. If at any time during the term of this Franchise, SMPA proposes to sell or dispose of any of its real property located in whole or in part in the Town, it shall grant to the Town the right of first negotiation to purchase the same. Nothing in this provision shall preclude SMPA from disposing of its real property in a timely fashion.

- 14.5 Purchase or Condemnation of Street Lighting System. The provisions of this Article apply with full and equal force to the purchase or condemnation by the Town of all or a portion of the street lighting service provided by SMPA, including all or a portion of any SMPA owned street lighting facilities, equipment, system, and plant. SMPA understands and agrees that the Town may choose to so purchase or condemn such street lighting service at any time.

**ARTICLE 15**  
**BREACH**

15.1 Breach

(A) If SMPA fails to perform any of the terms and conditions of this Franchise and such failure is within SMPA's control, the Town may require SMPA to show cause, at a hearing before the Board of Trustees, the reasons SMPA's rights and privileges under this Franchise should not be forfeited, or other penalties imposed as provided by this Franchise or by law. No such hearing shall be held unless SMPA has first been given notice of its failure and reasonable time, not to exceed ninety (90) days, in which to remedy the failures. If SMPA does not remedy the failures, the Board of Trustees may determine, at such a hearing, whether such failure to perform and SMPA's failure to remedy the same occurred, and if so, whether such failure to perform is substantial. The Board of Trustees may impose one or more of the following remedies or penalties for a substantial failure to perform:

- (1) A civil penalty of ~~five hundred dollars (\$500.00)~~ for each day or portion thereof that the failure was committed or continued. SMPA understands and agrees that such liquidated damages are intended to compensate the Town for the additional efforts of the Town in administering and enforcing ~~the~~ this Franchise, for inconvenience to Town operations and to the Residents, and loss of confidence in government and morale of the Town and its Residents when Franchise obligations are not met. Such damages are uncertain in amount and difficult to measure and prove accurately. By this Franchise, SMPA agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages;
- (2) Forfeiture of all rights under this Franchise; or
- (3) Any other remedies available to the Town by law.

(B) The Town may take action to correct the failure, and SMPA shall promptly reimburse the Town for the cost of such action.

15.2 Fees and Costs. In the event of judicial action taken by either party to enforce any of the terms or conditions of this Franchise, the prevailing party shall be awarded its attorney fees and costs associated with such action.

15.3 Judicial Review. Any declaration of forfeiture by the Board of Trustees shall be subject to judicial review as provided by law.

15.4 Other Legal Remedies. Nothing herein shall limit or restrict any legal rights or remedies that the Town may possess arising from any alleged violation of this Franchise.

- 15.5 Continued Obligations. Upon forfeiture, SMPA shall continue to provide service to the Town and its Residents until the Town makes alternative arrangements for such service.

## **ARTICLE 16 APPROVAL/AMENDMENTS**

- 16.1 Approval of Franchise. Following Town approval of this Franchise, SMPA shall promptly provide the Town with written notice of its acceptance of this Franchise, and upon receipt by the Town of such notice the Franchise shall become effective as of the date set forth in Section 17.9.
- 16.2 Terms Impacted by Legislative and Regulatory Changes. The Town and SMPA recognize that the electric utility industry is the subject of numerous initiatives by legislative and regulatory authorities. Some of the changes that might result from such initiatives may have an effect upon the terms of this Franchise that would be adverse to the Residents, the Town, or SMPA. In the event of such adverse changes, the Town and SMPA may need to amend various provisions of this Franchise, and agree to negotiate in good faith in reaching such amendments.
- 16.3 Other Amendments. At any time during the term of this Franchise, the Town or SMPA may propose amendments to this Franchise by giving thirty (30) days written notice to the other party of the proposed amendment(s). The Town and SMPA thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s). The word "amendment" as used in this Section does not include a change authorized in Article 5.

## **ARTICLE 17 MISCELLANEOUS**

- 17.1 No Waiver. Neither the Town nor SMPA shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.
- 17.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon SMPA, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of SMPA.
- 17.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights or remedies to third parties.
- 17.4 Representatives. SMPA and the Town shall designate the persons to whom notices shall be sent regarding any action to be taken under this Franchise. All notices shall be in writing

and forwarded by mail or hand delivery to the persons and addresses as stated below, unless changed by written notice given to the other. Until change is made, notices shall be sent as follows:

To the Town:  
Town Manager  
P.O. Box 9  
Rico, CO 81332

To SMPA:  
CEO/General Manager  
720 N. Railroad St.  
Ridgway, CO 81423

- 17.5 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall enter into good faith negotiations and proceed with due diligence to draft a substitute term ~~which~~that will achieve the original intent of the parties.
- 17.6 Entire Agreement. This Franchise constitutes the entire agreement of the parties with respect to the matters contained herein and supersedes any and all prior written or oral negotiations, correspondence, understandings and communications with respect to this Franchise.
- 17.7 Construction and Enforcement. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court of Dolores County.
- 17.8 Other Franchises. In the event SMPA becomes subject to Franchise or ordinance terms of another municipality or regulations of a county significantly more advantageous to the municipality or county, the Town may enact similar provisions by ordinance.
- 17.9 Effective Date. Notwithstanding the dates of adoption or approval by the parties, the effective date of this Franchise shall be ~~July 12, 2019~~immediately upon final passage pursuant to §3.5(d) of the Rico Home Rule Charter.

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TOWN OF RICO, COLORADO

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By \_\_\_\_\_

Zach McManus, Mayor

INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED  
PUBLISHED on first reading by the Board of Trustees this \_\_\_\_\_ day of \_\_\_\_\_,  
2019.

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TOWN OF RICO, COLORADO



# **Town of Rico, CO**

## **Multi-Hazard Evacuation Plan**

**2018**  
**Evacuation Plan**

## Record of Changes

### Rico, CO Evacuation Plan

The Evacuation Plan, including appendices, will be reviewed and approved on an annual basis. All updates and revisions to the plan will be tracked and recorded in the following table. This process will ensure the most recent version of the plan is disseminated and implemented by emergency response personnel.

| Change # | Date of Change | Entered By | Summary of Changes |
|----------|----------------|------------|--------------------|
|          |                |            |                    |
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**Authority:**

Evacuation authority is based upon the decision of the Incident Commander, County Sheriff or the Local Official Town Mayor/designee) per CRS 24-33.5-704 (7)(e-i). For large-scale emergencies the decision will come from the Dolores County Emergency Operations Center (EOC) policy group.

**Purpose:**

The purpose of the Town of Rico Evacuation Plan is to serve as an evacuation guide for Rico emergency responders and to educate the citizens and guests of Rico, CO on how to respond to an emergency requiring evacuation. The Emergency Evacuation Plan includes plans for both partial and full evacuation of the Town of Rico and follows CRS 24-33.5-704 (7)(e-i). The Multi-Hazard Evacuation Plan is designed to manage, coordinate, and implement the evacuation of the Town of Rico. Any large-scale incident could result in severe effects to our citizens, infrastructure and economy.

Evacuations may be made necessary for several reasons. Some evacuations will be short term (less than 24 hours) while others may be for a longer term (more than 24 hours). Some evacuations may allow residents time to prepare (1 or 2 hours – or longer) while other orders for evacuation may only provide a few minute's notice. Therefore, evacuation orders will vary depending on each situation. This plan is general in nature. In the event of a real emergency or disaster, the Incident Command System will be utilized to manage the operational response. The Operations and Planning Sections will customize operational plans to meet the needs of the actual situation. Depending upon the nature and severity of the critical incident, the ICS Command and General Staff will establish operational periods with specific action plans for each operational period. These action plans will identify specific areas to be evacuated, evacuation routes, sheltering alternatives, staging areas and emergency ingress routes for responders.

**Objectives:**

1. Protection of life and property.
2. Timely and efficient notifications to the public.
3. Orderly evacuation of portions or the entirety of the Town of Rico.
4. Manage the evacuation egress so as not to interfere with the ingress of emergency responders.
5. Maintain security during the evacuation period.
6. Safe and orderly return of evacuees.

**Emergency Definition:**

An emergency is defined as a situation, or the threat of an impending situation, having the potential to abnormally affect lives, property and the environment; or, to threaten grave public disorder. And, by its nature and magnitude, requires controlled and coordinated response by a number of agencies, as distinct from routine operations.

**Potential Community Hazards:**

1. Wildland Fire
2. Snowstorm/Blizzard
3. Flood
4. Hazardous Materials Release
5. Acts of Terrorism
6. Avalanche
7. Earthquake
8. Landslide
9. Erosion and Deposition
10. Mass Transportation/Mass Casualty Incident
11. Utility Service Failure

If any emergency or disaster makes it necessary to evacuate all or any portion of the Town of Rico, the following procedures will be followed.

**Incident Information Messages:**

An Incident Information Message is the first and general message to the public and media that the potential for a public safety issue exists. The Incident Information Message is to be issued by either the Incident Commander, Sheriff or the County Emergency Manager and stands to place citizens on notice that a situation may evolve into a greater threat to the community and that personal steps should be made to prepare for evacuation or shelter in place. The County Emergency Manager will use Nixle for the initial messaging.

**Types of Evacuation Orders:**

1. Pre-Evacuation Order: This evacuation order is issued when it is believed that a hazard has a high probability of posing significant threat to people living in the areas at risk. Citizens are encouraged to leave the danger area; however, the decision to evacuate will be theirs. It will be issued when the probability of impact by the hazard is high and the vulnerability of the residents is great.

2. **Mandatory Evacuation Order:** This evacuation order is issued when it is believed that a hazard is almost certain to adversely impact the area. After a Mandatory Evacuation Order has been issued, all persons are required to evacuate the danger zone. If persons refuse to leave, they will be given lawful orders to leave and will be advised that no emergency resources will be endangered to rescue them at a later time. Refusal to evacuate may result in criminal charges being filed.

**Action Steps of Evacuation Plan:**

1. Incident Occurs
2. Emergency Services Respond
3. Situation Assessed
4. Incident Command System Activated
5. Declaration of Emergency
6. Emergency Plan Activated
7. Precautionary/Mandatory Evacuation Ordered by Incident Commanders
8. Evacuation Initiated
9. Security of Evacuated Areas Maintained by Law Enforcement
10. Return of Evacuees

**Evacuation Incident Command Structure:**

Evacuations will be managed through the Incident Command System. In most critical incidents of the magnitude requiring evacuation, the Dolores County Sheriff's Office would perform IC duties and/or the Dolores County EOC would be activated. In most cases, a unified command structure would be utilized.

Involved Departments would include:

Rico Fire Protection District  
Dolores County Sheriff's Department  
Dolores County Government  
Town of Rico Manager  
U.S. Forest Service  
Colorado Department of Transportation  
Town of Rico Board of Trustees  
Colorado State Patrol

Staffing Evacuation Centers:

American Red Cross (Shelter)

Salvation Army (Food)  
Dolores County School District Officials (Facilities)  
Dolores County Pioneer Center (Facilities)

**Incident Command Operations and/or Planning Sections will determine the following:**

1. Boundaries of area to be evacuated
2. Identify primary evacuation routes
3. Identify primary emergency vehicle ingress routes
4. Identify necessary traffic control points
5. Collection Centers identified
6. Identify Sheltering locations

**Incident Commander shall:**

1. Order the appropriate evacuation
2. Initiate public notification of evacuation

**Public Notification:**

When implementing the Emergency Evacuation Plan, the Dolores County Office of Emergency Management will utilize Nixle Emergency Notification to: send text messages to **enrolled** cell phones, homes, hotels and businesses in the affected area(s), send email messages to enrolled recipients, send voice messages to enrolled cell and land-line phones and/or send iPAWS messages to all cell phones in the affected geographic area(s). All local television and radio stations will also be alerted by the iPAWS message and will broadcast notification. Additionally, messages will be delivered through Facebook (Dove Creek Press, Dolores County Emergency Management). All messages will contain emergency and evacuation instructions.

The Sheriff's Department/Emergency Manager may coordinate a Joint Information Center (JIC) to keep the public and the media updated on the nature of the emergency and evacuation procedures. As evacuations become probable, an assigned Public Information Officer will disseminate information to the public regarding evacuation preparation along with information on how to sustain themselves and members of their family for up to 72 hours. The JIC will conduct regular media briefings at an established location. Public Information Officers for Dolores County and the Town of Rico will initiate periodic updates of the County and Town's websites ([www.ricocolorado.gov](http://www.ricocolorado.gov) and [dolorescounty.org](http://dolorescounty.org)) containing emergency evacuation instructions. Email and fax notifications may be sent to local media updating emergency information and evacuation procedures. Additionally, the JIC will disseminate information and a phone number (970-677-2257) for persons with disabilities needing public transportation to a sheltering location.

First responders will conduct door-to-door evacuations and/or drive through neighborhoods making public notifications on emergency loud speakers.

**Evacuation Instructions:**

## Self-Evacuation by Vehicle:

1. Exit the area/neighborhood utilizing designated evacuation routes.
2. If citizens have a private sheltering option (hotels, friends) out of the Rico area, they should respond there.
3. If no private sheltering option exists, respond to the designated Dolores County sheltering locations.

Citizens who self-evacuate will be asked to indicate that they have already evacuated their residence by displaying a large, white object, such as a sheet, inside the residence, in a visible, conspicuous location, in the front, street-side of their home and to turn on their porch light.

**Safety Zones:**

In the event that Hwy 145 is closed both north and south of Rico, potential Safety Zones have been identified where residents and guests who have been evacuated may assemble until an evacuation route is open. The Command and General Staff will select Safety Zones depending upon the nature and complexity of the incident and the JIC will disseminate Safety Zone information to the public. Potential Safety Zones include:

Rico Fire House  
Rico Courthouse  
Rico Elementary

The Town of Rico and the Dolores County Road and Bridge Department will assign heavy equipment to patrol the bus and evacuation routes within the Town limits to keep them free from debris and open for egress and ingress.

**Collection Area:**

PRIMARY Collection Center – Rico Volunteer Fire Department. The Dolores County Transportation Department/School District/Office of Emergency Management buses and shuttle vans will transport evacuees to a Sheltering Center.

Persons with disabilities who are unable to go to the designated location should call 970-677-2257 for pick-up by appropriate emergency transportation. The Joint Information Center will disseminate information for persons with disabilities needing public transportation to a sheltering location.

**Pets:**

American Red Cross policy does not permit pets inside public shelters. Certified service animals are not considered pets and will be allowed to stay with their owners. The Town and County will coordinate with the Red Cross for temporary housing of pets of individuals who are housed in shelters. Pet owners should evacuate with their animals whenever possible. Pet owners are encouraged to make contingency plans with friends and family who could take in or care for animals in the event of an evacuation. See [www.readycolorado.com](http://www.readycolorado.com) for specific recommendations on pet evacuation preparations.

### **Residential Evacuation Advice Checklist:**

#### **Preparation:**

In the event of an evacuation, the American Red Cross will prepare one or more Sheltering Centers to shelter evacuees, however, the Centers may not be immediately fully equipped to meet everyone's needs. Therefore, it is important for each evacuee to prepare in advance for their own needs during the initial hours of evacuation. The Public Information Officers will advise the public to prepare 72 Hour Emergency Kits to sustain all family members until a full support response can be mustered. See [www.ready.gov](http://www.ready.gov) , [www.readycolorado.com](http://www.readycolorado.com) or [www.redcross.org](http://www.redcross.org) for more details regarding 72 hour preparation.

If time is available or notice of intent to evacuate the area is given, the following preparations should be immediately undertaken by residents:

1. Gather medications and be prepared to share special medication needs with the Registrar at the Sheltering Center.
2. Ensure all local family members are aware of the impending situation and your evacuation intentions.
3. Private motor vehicles should be prepared and fueled.
4. Emergency supplies should be readied.
5. Secure your home on departure.
6. Alert family members/friends outside of the Rico area of the impending situation and your evacuation intentions.

### **American Red Cross Sheltering Centers:**

Listed below are potential Sheltering Centers identified by the American Red Cross. Evacuees will be advised of the Sheltering Center(s) that will be opened during a specific incident.

Dove Creek High School

Dove Creek Elementary

Dolores County Pioneer Center

Additionally, an American Red Cross trailer is pre-stocked and positioned within Montezuma County to assist in opening an emergency shelter. By American Red Cross policy, registered

sex offenders are not allowed in public shelters and will be sheltered separately. The Dolores County Sheriff's Office will provide the Red Cross with the names of registered sex offenders registered in the Town of Rico.

### **Traffic Control Points:**

Traffic control may be required to facilitate egress of evacuees and ingress of emergency responders. Traffic control points may be located within the Town of Rico or outside the Town limits.

### **Security:**

To ensure the evacuation is complete:

Security of vacated areas will be maintained by Law Enforcement.

During an evacuation, roadblocks into the area will be maintained by the Sheriff's Office, and supplemented by designated emergency responder/volunteer assistance, as required.

Access to an evacuated area will be restricted to authorized emergency personnel.

Only when the area is determined to be safe shall residents with proper identification be allowed to return to the area. Depending on the circumstances, residents may initially be allowed in the area to remove personal items from residences; however, occupancy will not be allowed until utility services have been restored and structures have been deemed to be safe. Every effort will be made to verify the identity of persons claiming to be residents without identification; however, if identity cannot be determined persons will not be allowed into secure areas. Members of the media will be allowed into secure areas during organized media tours and/or when accompanied by authorized persons only.

### **Human and Animal Evacuation Flagging System:**

As part of the evacuation procedure, emergency personnel will go door to door in an attempt to ensure that all residents of the area have been notified of the evacuation order and to assist any persons who wish to leave but are unable to do so. Emergency responders shall utilize a designated flagging system to classify the status of the structure, occupants and animals. Emergency responders will place a colored tape on the front door of the structure and at the end of the driveway to indicate the occupancy status. Emergency responders will record occupancy status in map

**Green** – Occupant was contacted and understands evacuation condition.



**Yellow** – Contact attempted. No contact made.

**Blue** – Pets or livestock unattended at residence. Can be combined with **Green** or **Yellow**.

**Red** – Occupant refuses to leave the property.

**Special Needs Population:**

There are citizens and guests that will require assistance leaving their residence or those who have medical needs that require electricity in the case of a power outage. Persons with disabilities requiring assistance should call 970-677-2257 advising their location and their need to evacuate. This is only for those who do not have transportation and cannot make it to the designated evacuation center or the bus stop location.

**Return of Evacuees:**

1. The Incident Commander, Safety Officer, Operations Section Chief and Building Officials will monitor the area in order to determine when the area(s) is safe for return.
2. The Incident Commander will approve the order to allow residents to return.
3. Designated return routes and appropriate public information will be provided to evacuees through Nixle 360 and local media.

**Primary Evacuation Routes:**

Southbound Hwy 145 to Dove Creek is designated as the primary evacuation route out of Rico. Northbound Hwy 145 to Dove Creek is designated as the secondary evacuation route out of Rico. All evacuation routes identified in this plan direct motor vehicle traffic to Hwy 145 for either a northbound or southbound egress.

**Attachment 1**

Evacuation/Transportation Checklist

*Chairman of the Board, or his/her designee, Town Mayor or Incident Commander:*

- ☐ Upon notification, report to the *Emergency Operations Center* or command post. Serve in

the command group and assume direction and control.

- ☐ Receive a situational briefing.
- ☐ Determine if an evacuation is warranted and, if so, to what extent (localized or county-wide, voluntary or ordered).
- ☐ Examine the ramifications of ordering evacuation:
  - ☐ Security of evacuated area.
  - ☐ Weather conditions, downed power lines, etc. (i.e., is it safe to drive?)
  - ☐ Potential traffic congestion and traffic control issues.
  - ☐ Available sheltering/mass and shelter/mass care resources (i.e. shelter managers, staff, bedding, food supplies)
  - ☐ General public guidelines (rules) for evacuation.
  - ☐ Informing the public.
  - ☐ Transportation availability.
  - ☐ Other concerns brought out during the briefing.
  - ☐ Special needs/special medical needs/special transportation needs (i.e. elderly, non-ambulatory, etc.)
- ☐ If an evacuation is ordered, determine which agencies will carry out the evacuation.
- ☐ Prepare necessary documentation. (*Additional documentation may be necessary for FEMA or other reimbursement*)

**Transportation Director:**

- ☐ When notified, report to the *Emergency Operations Center* or command post. Serve in the Logistics group.
- ☐ Receive a situational briefing.
- ☐ Determine what transportation resources are available (i.e. vehicles, personnel, fuel supplies,

railroad, aircraft, etc.) *(Example: spreadsheet of vehicles, # of seats, securement stations, etc.)*

- Determine transportation needs of the public, (i.e. special medical needs/special transportation needs).
- Assess weather and related road conditions to determine the ability to safely move people and/or supplies.
- Determine the availability of fuel (emergency supplies) and emergency vehicle repair.
- Ensure drivers are appropriately licensed and adequately trained.
- Determine additional insurance needs.
- Determine potential legal ramifications. Be familiar with emergency ordinance, declaration of emergency and NCGS 115C-242 (use of school buses) and other transportation concerns.
- Determine or designate pick-up points.
- Communicate pick-up point locations, times or schedules to the Public Information Officer and the Emergency Services Director.
- Dispatch or cause to be dispatched, appropriate transportation to pre-determined or designated pick-up points.
  
- **Brief drivers:**
  - Security
  - Mission and assignments and maps
  - Weather conditions, downed power lines, etc. (i.e. is it safe to drive?)
  - Potential traffic congestion and traffic control issues
  - Available sheltering/mass care and shelter/mass care issues
  - General public guidelines (rules) for evacuation
  - Location and fuel maintenance *(example – spreadsheet of remaining daily fuel per vehicle)*
  - Location of emergency workers, food
  - Additional concerns discussed during the briefing
  - Special needs/special medical needs/special transportation needs (elderly, non-ambulance, etc.)
- Communicate with and maintain communication with drivers.
- Make sure drivers maintain a mileage and time log and return their logs at the end of their shift or assignment *(additional information may be required for reimbursement)*.
- Communicate and maintain communication with fuel suppliers and maintenance personnel.
- Develop an ongoing staffing and vehicle availability plan and be prepared to brief the EOC and/or Incident Commander when called on to do so.
- Carry out other functions necessary to provide transportation in emergency situations

## SPECIAL USE PERMIT APPLICATION

### TOWN OF RICO

Applicant Name: Mtn. Top Fuel & MKT Phone Number: 790.967.4000

Address: 225 Glasgow Fax No. -

Email(s) GBHMEX@gmail.com

Street Address and Legal Description of Subject Property: 225 Glasgow

Lots 36-40 & 235 Glasgow, Lots 18-23 Block 11

Town of Rico

Zone District of Subject Property: Commercial

Description of Special Use Request (Use separate letter) *See Rico Land Use Code §420 Generally; 424 Submittal Requirements:*

Reasons Special Use Permit should be granted (Use separate letter) *See Rico Land Use Code §428:*

- ☐ 1. Statement from County Treasurer showing status of current taxes due on affected property
- ☐ 2. Letter of agency if applicant is other than the owner of the property
- ☒ 3. Complete Special Use Permit Narrative
- ☒ 4. An Application Fee in the amount of \$200.00.

Attach a site plan and any other information necessary to clearly demonstrate eligibility for the requested Special Use Permit based on the review standard in §436 in the Rico Land Use Code and attach a mailing list with names, addresses, and property owned of all property owners within 200 feet of subject property with certificate of mailing.

*I swear that the information provided in this application is true and correct and that I am the owner of the property or otherwise authorized to act on behalf of the owner of the property.*

Signature: Susan C. Steele Date: 6.6.19

Date Application Received: 6-19-2019 Date of Hearing: 6-26-2019

Application Fee Received: 6-19-2019 Board of Adjustments Action: \_\_\_\_\_

Application Complete: except taxes Approval Subject to Conditions: \_\_\_\_\_

Mailing Notice Complete: ✓ due Application Reviewed by: KLD

Applicant required Title Certificate from title company or attorney opinion letter listing name of property owner(s), liens, judgments, etc. affecting title to property.

☐ Yes ☒ No

## AFFIDAVIT OF MAILING PUBLIC NOTICE LETTER

Town of Rico

Town of Rico

P.O. Box


Rico, Colorado, 81332

Re: Certification and Affidavit of Mailing Public Notice Letter for 302 S. Glasgow also known as 225 S. Glasgow, Lots 36-40 and 235 S. Glasgow, Lots 18 – 23, Block 11 Town of Rico.

I hereby declare that I, Susan Steele, mailed a copy of the Town approved, enclosed public letter via U.S. First Class Mail, postage prepaid thereon on June 6<sup>th</sup>, 2019 to the attached list of property owners. The public notice letter was prepared and mailed in accordance with the public noticing requirements of the Rico Land Use Code. The public notice letter was placed in the mail on June 6<sup>th</sup>, 2019, which was 20 days prior to the public hearing(s) to be held on June 26<sup>th</sup> (Rico Planning Commission) and June 26<sup>th</sup> (Rico Board of Trustees) meeting 2019. The list of property owners includes all lot and condominium property owners located within 200 feet of the boundary of the existing or proposed lot(s). The adjacent property owner list was compiled from the Dolores County GIS website or Assessors Office.

Attached is the copy of the noticing letter, list of all property owners noticed, including their lot number and mailing address, a copy of the vicinity map mailed with the noticing letter, and a map showing all lots that were included within the 200 foot noticing area.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

  
6/6/19

## Reason for Special use Application

### Mtn. Top Fuel & Market

The reason for the Special use permit is to provide Security for the property.

It has been our personal experience when we did have the Motorhome here that there was an attempted Robbery by 1 woman & 3 men. We were able to foil the robbery by being there. They then went up to Silverglance. 911 was dialed.

In the past all of the Propane tanks were stolen, as well as the town trailer.

As owners we feel <sup>it</sup> is important for us to be on the property during our busiest summer months.

We also plan on looking into building a home on one of the lots.

6.6.19

Suzanne Steele  
Ly Steele

# "Sight map"

6.6.19

Highway

Parking

X  
Pump

X  
Pump

Gas station

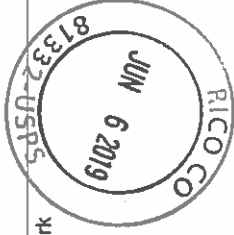
Public  
Parking

Motor Home





# USPS Receipt for Money or Services

|   |   |   |   |
|---|---|---|---|
| Post Office<br><b>Rice 81332</b>                          | Station   | Receipt Number<br><b>65</b>   |   |
| <input type="checkbox"/> P.O. Receipt for Money           | Finance Number  | Unit ID   | AIC Number  |
| Receipt for: (indicate purpose)                           |   | Amount \$   |   |
| Received from: (show address only when receipt is mailed) |   | Permit Number or SSN (Employees only)   |   |
| <input type="checkbox"/> P.O. Box/Caller Service Fees     |   | Information on your PS Form 1093, Application for Post Office Box or Caller Service, must be updated if it is changed. For regulations pertaining to P.O. Boxes, see rules for use of Post Office Boxes and Caller Service on PS Form 1093. |   |
| Customer name:  | <b>8 Letters<br/>1 Package</b>  | Amount \$<br><b>\$24.35</b>   | AIC Number  |
| Box/Caller Number(s)                                      | <input type="checkbox"/> For one semiannual payment period (AIC 158)<br><input type="checkbox"/> For annual payment period (AIC 115)<br><input type="checkbox"/> Reserved Number Fee (AIC 115)<br>(Ending date / / ) (mm/dd/yyyy) |   | Postmark<br> |
| Certifying Signature                                      |   |   |   |



# **SB05-152 Opt-Out Kit: A Local Government Blueprint for Improving Broadband Service in Your Community**

May 2017

## Introduction

In order to compete in today's economy, communities across the state have become increasingly dependent on Internet access – and especially high-capacity (“broadband”) access - for business development and operations. The availability of broadband has also become a necessity for quality of life and desirability of a community, providing residents access to things like online education and distance learning opportunities, telemedicine and entertainment content (movies, music, etc.). Broadband has become so critical, in fact, that many now regard it as a basic infrastructure need - on par with roads, water systems and energy grids.

Unfortunately, numerous communities across Colorado still lack adequate Internet connectivity. The reasons vary, but more often than not these areas are too sparsely populated, too remote or in regions where the topography (mountainous terrain, etc.) makes expanding service difficult and expensive for telecommunication providers. These communities are “upside down” from a traditional business model standpoint, and providers are unable or unwilling to connect these areas, leaving them at an economic disadvantage from their more urbanized neighbors.

While local governments often play a direct role in economic development efforts, cities and counties historically have not been directly involved in the delivery of retail telecommunication services. However, the increasing demand for broadband service – often driven by economic development concerns - has forced many local government officials to reexamine their role in the provision of broadband services.

In the last few years, a growing number of local governments have started looking at investing public dollars in broadband infrastructure improvements (usually fiber optic cable lines or cell towers) in order to attract Internet providers and enhance economic development efforts in their region. The Department of Local Affairs has also heard these community concerns, and has expanded its existing broadband planning grant program to include funds for local government investments in “middle mile” broadband infrastructure.

## SB 152 and Statutory Prohibitions on Local Government Broadband Infrastructure

One of the biggest impediments to local governments enhancing broadband infrastructure is a law passed in 2005, which has since been commonly referred to as “Senate Bill (SB) 152” (SB05-152, attached to this memorandum and codified at sections 29-27-101-304, C.R.S.). SB 152 prohibits most uses of municipal or county money for infrastructure to improve local broadband service, without first going to a vote of the people. The hurdles put in place by this statute are not insurmountable; indeed, in the past few years 68 municipalities and 28 counties have placed measures on the ballot to override the prohibitions in SB 152. These measures have passed handily in virtually every jurisdiction - with the support of citizens who are frustrated and want timely action on broadband service in their communities.

Continued dissatisfaction over a lack of adequate broadband is resulting in more and more jurisdictions considering going to the ballot with SB 152 questions. During the last few years, CML and CCI have been meeting with local government officials, economic development professionals, state agency representatives and telecommunication experts from jurisdictions whose voters have approved SB 152 questions at the ballot. This opt-out kit is designed to help interested local government officials and staff to frame the issue as they consider their own ballot questions and work toward improving broadband service in their communities.

## SB 152 Frequently Asked Questions (FAQ's)

### What does a SB 152 election accomplish?

SB 152 requires that an election be held before a local government may “engage or offer to engage in providing” various telecommunication services. The term “providing” is given an expansive definition in the statute, which restricts both the direct and “indirect” provision of service (“indirect”, in turn, is given its own, broadly restrictive definition). Fortunately, through a successful SB 152 election, a local community can clear away this legal impediment to a wide variety of local broadband initiatives.

It is important to point out that the vast majority of local governments who have passed SB 152 questions (or are considering going to the ballot in the near future) are **not** interested in hooking up homes and businesses and providing actual broadband services themselves. By and large, these jurisdictions are working to enhance local broadband infrastructure in order to *attract* private sector service providers who would otherwise be unwilling or unable to serve their communities. The local broadband initiatives in the jurisdictions passing SB 152 questions to date usually involve some form of public-private partnerships between local governments, economic development agencies and the industry.

### Is referring a SB 152 question to the ballot expensive?

No more so than any other referred measure. Most jurisdictions have referred their questions when the municipality or county was *already* having an election. Accordingly, the addition of the SB 152 issue did not significantly increase costs. In a coordinated election, a particular jurisdiction’s costs would be affected by the terms of the IGA regarding election cost allocation between the county and participating local governments.

### Are there any restrictions on referring SB-152 ballot measures in odd-numbered year coordinated elections?

Apparently not. A wide number of locally-referred questions have been submitted to voters in coordinated elections conducted in odd-numbered years in Colorado. Local governments have regularly referred TABOR questions and home rule charter amendment ballot questions to the voters in odd-numbered years, and this practice is explicitly authorized in C.R.S. § 1-41-103. Additionally, the Attorney General issued an opinion in 1999 (No. 99-8 AG Alpha No. HE CS AGAWD) which concluded that local governments may refer ballot questions on term limits in odd-numbered years as well. Odd-year ballot questions dealing with issues outside of TABOR, charter amendments and term limits are less common, but have been referred fairly regularly by local elected

officials over the years without challenge. The language in SB 152 (specifically C.R.S. § 29-27-201(1)) requires that “Before a local government may engage in providing...telecommunications service, or advanced service, an election shall be called on whether or not the local government shall provide the proposed...service.” This authorizing language is broad in nature, and does not appear to limit the ballot question to the general election ballot. Again, local government officials are advised to consult with legal counsel in the development of these ballot questions.

### **What sort of election specifics does SB 152 require?**

Not many. SB 152 specifies four requirements for ballot questions in a SB 152 election. (See: C.R.S. § 29-27-201(2))

The ballot:

- (1) Shall pose the question as a “single subject”,
- (2) Shall include a description of the “nature of the proposed service,”
- (3) Shall include a description of “the role that the local government will have in the provision of the service,” and
- (4) Shall include a description of the “intended subscribers of such service.”

### **How have other jurisdictions addressed these requirements?**

A review of the ballot questions put forth by local governments so far (included below) shows a clear preference for broad “anything and everything” type authority. Industry representatives have complained from time to time that such local ballot language has lacked the specificity required by the statute. This notion has never been tested in court. One might also argue that a “broad authority” question that describes the nature of the service proposed, along with potential future build-outs or applications, is not fatally flawed by its inclusion of the latter. Furthermore, courts have been traditionally hesitant to reverse the will of the voters, if evident. Obviously, the development of local SB 152 ballot language should be done in close consultation with legal counsel.

### **What about the “single subject” requirement?**

The term “single subject” is not defined in SB 152. Nonetheless, the ballot questions submitted by local governments thus far seem comfortably within the single subject standard applied to statewide *ballot initiatives*, in cases such as In the Matter of the Ballot Title and Submission Clause for 2013-2014 #129, 333 P.3d 101 (Colo. 2014). Local government officials are urged to consult with legal counsel.

**Are there any additional election requirements that distinguish a SB 152 question from other matters routinely referred to the ballot by a county or municipality?**

No (but again, please confer with your legal counsel). As always, attention should be paid to the requirements of the Fair Campaign Practices Act (Section 1-45-117, C.R.S.), which forbids use of public funds for advocacy in elections. This restriction is a prudent consideration in planning any campaign for a successful SB 152 election.

**Does voter approval of a county SB 152 ballot question have the effect of authorizing the provision of such services by municipalities within that county?**

No. SB 152 requires voter approval by each jurisdiction participating in the provision of covered services.

**Does opting out of SB 152 bind local taxpayers to provide local funds?**

No. Opting out of SB 152 simply removes the local prohibition on expending public funds to provide service and allows local jurisdictions to explore and develop plans for their communities. If any jurisdiction gets to the point where they are looking to invest public funds they must follow their own guidelines for doing so.

**Does a jurisdiction need to approve a SB 152 ballot question in order to qualify for broadband infrastructure grant funds from the Department of Local Affairs (DOLA)?**

It depends. DOLA's broadband grant program provides funding for regional planning and "middle mile" infrastructure projects (i.e., projects that do not provide "last mile" connections to customers). The guidance in DOLA's broadband grant policies suggests that each jurisdiction must determine whether it is in compliance with the statutory restrictions set forth in SB 152. DOLA requires any grantee to be in compliance with any applicable laws and regulations. DOLA itself will not make that determination, nor does the awarding of a grant confer any certainty or acknowledgment of compliance on DOLA's part to the grantee. DOLA's broadband grant policy guidelines can be found at: <http://dola.colorado.gov/demog-cms/content/dola-broadband-program>.

|   |
|---|
| <b>Sample Local Government Ballot Language for SB 152 Elections</b> |
|---|

**County Questions****Rio Blanco County (Passed Fall 2014)**

“Without increasing taxes, shall the citizens of Rio Blanco County, Colorado, authorize the Board of County Commissioners of Rio Blanco County, Colorado, to provide to potential subscribers including telecommunications service providers, residential and commercial users within Rio Blanco County, all services restricted since 2005 by Title 29, article 27 of the Colorado Revised Statutes, including “telecommunication services,” “cable television services,” and “advanced services” which is defined as high speed internet access capability in excess of two hundred fifty six kilobits per second both upstream and downstream (known as “broadband”) including any new and improved bandwidth services based on future technologies, utilizing the existing community owned fiber optic network and/or developing additional infrastructure, either directly or indirectly with public or private sector partners?”

**San Miguel County (Passed Fall 2014)**

“Without increasing taxes, shall San Miguel County, Colorado, have the legal ability to provide any or all services currently restricted by Title 29, article 27, Part 1, of the Colorado Revised Statutes, specifically described as “advanced services,” “telecommunication services,” and “cable television services,” as defined by the statute, including, but not limited to, any new and improved high bandwidth services based on future technologies, utilizing community owned infrastructure including but not limited to any existing fiber optic network, either directly, or indirectly with public or private sector service providers, to potential subscribers that may include telecommunications service providers, and residential or commercial users within San Miguel County?”

**Yuma County (Passed Fall 2014)**

“Without increasing taxes, shall the citizens of Yuma County Colorado re-establish their counties’ right to provide all services and facilities restricted since 2005 by Title 29, Article 27 of the Colorado Revised Statutes, described as “Advanced Services,” “Telecommunication Services,” and “Cable Television Services,” including providing any new and improved broadband services and facilities based on future technologies, utilizing existing or new community owned infrastructure including but not limited to the existing fiber optic network, either directly or indirectly with public or private sector partners, to potential subscribers that may include telecommunications service providers, residential or commercial users within the boundaries of Yuma County?”

**Clear Creek County (Passed Fall 2015)**

Without increasing taxes by this measure, shall citizens of the County of Clear Creek, Colorado, authorize their board of county commissioners to provide any or all services currently restricted by Title 29, Article 27, Part 1, of the Colorado Revised Statutes, specifically described as high speed internet access ("advanced service"), "telecommunications service," and "cable television service," as defined by the statute, including, but not limited to, any new and improved high bandwidth services based on future technologies, either



directly or indirectly with public or private sector partners or providers, to potential subscribers including, without limitation, other service providers and residential, commercial and governmental users within Clear Creek County? Yes - For authorization to provide high speed internet access ("advanced") service, telecommunications service, and cable television service. No - Against authorization to provide high speed internet access ("advanced") service, telecommunications service, and cable television service.

**La Plata County (Passed Fall 2015)**

Without increasing taxes, shall La Plata County, Colorado be authorized to reestablish the right to provide high-speed services, and/or cable television services (all as defined in § 29- 27-102, Colorado Revised Statutes) to residents, businesses, schools, libraries, nonprofit entities and other users of such services, either directly or indirectly with public or private sector partners?

**Ouray County (Passed Fall 2015)**

Shall Ouray County, without increasing taxes by this measure, be authorized to provide all services and facilities as permitted by Title 29, Article 27 of the Colorado Revised Statutes, described as "advanced services", "telecommunications services" and "cable television services", including providing any new and improved broadband services and high-speed internet services and facilities, based on current or future technologies, and utilizing existing or future county owned or leased infrastructure, fiber optic connections and networks, either directly or indirectly, including use of county wireless connections in county facilities without charge to members of the public, with or without public or private partners, for the benefit and use of residents and visitors to Ouray County and to potential residential and commercial subscribers in Ouray County?

**Washington County (Passed Fall 2015)**

Pursuant to the authority granted by C.R.S. Section 29-27-101 to 304 titled "competition in utility and entertainment services" shall Washington County be authorized to provide high-speed internet services, (advanced services), telecommunications services, and/or cable television services to residents, businesses, schools, libraries, nonprofit entities and other users of such services either directly or indirectly with public or private sector partners as those terms are defined in the aforementioned statutes within the unincorporated boundaries of Washington County, Colorado?

**Larimer County (Passed November 2016)**

Without increasing taxes, shall the citizens of Larimer County Colorado re-establish Larimer County's right to provide any and all services and facilities restricted since 2005 by Title 29, Article 27 of the Colorado Revised Statutes, described as "Advanced Services" (high-speed internet), "Telecommunication Services," and "Cable Television Services," including but not limited to any new and improved broadband services and facilities based on future technologies, utilizing existing or new community owned infrastructure including but not limited to the existing fiber optic network, either directly, or indirectly with public or private sector partners, to potential subscribers that may include telecommunications service providers, residential or commercial users within the boundaries of Larimer County?

## Municipal Questions

|                      |  |                                  |
|----------------------|--|----------------------------------|
| SPRING 2015          |  |                                  |
| GRAND JUNCTION       | CITY OF GRAND JUNCTION REFERRED MEASURE 2A SHALL THE CITY OF GRAND JUNCTION, WITHOUT INCREASING TAXES BY THIS MEASURE, BE AUTHORIZED TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNER(S), HIGH-SPEED INTERNET SERVICES (ADVANCED SERVICE), TELECOMMUNICATIONS SERVICES AND/OR CABLE TELEVISION SERVICES AS DEFINED BY § 29-27-101 TO 304 OF THE COLORADO REVISED STATUTES, INCLUDING BUT NOT LIMITED TO ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICE(S) BASED ON FUTURE TECHNOLOGIES, TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, WITHOUT LIMITING ITS HOME RULE AUTHORITY?   | PASS,<br>75%-<br>22%             |
| ESTES PARK           | WITHOUT INCREASING TAXES, SHALL THE TOWN OF ESTES PARK REESTABLISH THE TOWN'S RIGHT TO PROVIDE ALL SERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING, BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE TOWN AND THE SERVICE AREA OF THE TOWN'S LIGHT AND POWER ENTERPRISE? | PASS,<br>YES:<br>1652<br>NO: 136 |
| FALL 2014            |  |                                  |
| BOULDER              | SHALL THE CITY OF BOULDER BE AUTHORIZED TO PROVIDE HIGH-SPEED INTERNET SERVICES (ADVANCED SERVICES), TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, AS EXPRESSLY PERMITTED BY §§ 29-27-101 TO 304, "COMPETITION IN UTILITY AND ENTERTAINMENT SERVICES," OF THE COLORADO REVISED STATUTES, WITHOUT LIMITING ITS HOME RULE AUTHORITY?  | PASS,<br>17512-<br>3551          |
| CHERRY HILLS VILLAGE | SHALL THE CITY OF CHERRY HILLS VILLAGE, WITHOUT INCREASING TAXES BY THIS MEASURE, AND TO RESTORE LOCAL AUTHORITY THAT WAS DENIED TO LOCAL GOVERNMENTS BY THE COLORADO GENERAL ASSEMBLY AND FOSTER A MORE COMPETITIVE MARKETPLACE, BE AUTHORIZED TO PROVIDE HIGH-SPEED INTERNET, INCLUDING IMPROVED HIGH BANDWIDTH SERVICES BASED ON NEW TECHNOLOGIES, TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NON-PROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, AS EXPRESSLY PERMITTED BY ARTICLE 27, TITLE 29 OF THE COLORADO REVISED STATUTES?  | PASS,<br>2362-<br>613            |
| RED CLIFF            | SHALL THE TOWN OF RED CLIFF BE AUTHORIZED TO PROVIDE CABLE TELEVISION, TELECOMMUNICATIONS AND/OR HI-SPEED INTERNET SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, EITHER DIRECTLY OR INDIRECTLY THROUGH PUBLIC OR PRIVATE SECTOR PARTNERS?  | PASS,<br>56-24                   |

|             |   |                       |
|-------------|---|-----------------------|
| WRAY        | WITHOUT INCREASING TAXES, SHALL TH CITIZENS OF WRAY, COLORADO RE-ESTABLISH THEIR CITY'S RIGHTS TO PROVIDE ALL SERVICES AND FACILITIES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES,' TELECOMMUNICATIONS SERVICES' AND 'CABLE TELEVISION SERVICES,' INCLUDNG PROVIDING ANY NEW AND IMPROVED BROADBAND SERVICES AND FACILITIES BASED ON FUTURE TECHONOLOGIES, UTILIZING EXISTING OR NEW COMMUNITIY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERICAL USERS WITHIN THE CITY?                        | PASS<br>3167-<br>2461 |
| YUMA        | WITHOUT INCREASING TAXES, SHALL TH CITIZENS OF YUMA, COLORADO RE-ESTABLISH THEIR CITY'S RIGHTS TO PROVIDE ALL SERVICES AND FACILITIES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES,' TELECOMMUNICATIONS SERVICES' AND 'CABLE TELEVISION SERVICES,' INCLUDNG PROVIDING ANY NEW AND IMPROVED BROADBAND SERVICES AND FACILITIES BASED ON FUTURE TECHONOLOGIES, UTILIZING EXISTING OR NEW COMMUNITIY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERICAL USERS WITHIN THE CITY'S UTILITY SERVICE AREA? | PASS,<br>71%-<br>29%  |
| SPRING 2014 |   |                       |
| MONTROSE    | REFERRED MEASURE "A"<br>WITHOUT INCREASING TAXES, SHALL THE CITIZENS OFTHE CITY OF MONTROSE, COLORADO, RE-ESTABLISH THEIR CITY'S RIGHT TO PROVIDE ALL SERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OFTHE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE CITY?                                    | PASS<br>3969-<br>1396 |
| FALL 2013   |   |                       |
| CENTENNIAL  | BALLOT QUESTION 2G  | PASS                  |

|           |  |  |
|-----------|--|--|
|           | SHALL THE CITY OF CENTENNIAL, WITHOUT INCREASING TAXES, AND TO RESTORE LOCAL AUTHORITY THAT WAS DENIED TO ALL LOCAL GOVERNMENTS BY THE STATE LEGISLATURE, AND TO FOSTER A MORE COMPETITIVE MARKETPLACE, BE AUTHORIZED TO INDIRECTLY PROVIDE HIGHSPEED INTERNET (ADVANCED SERVICES), TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, THROUGH COMPETITIVE AND NON-EXCLUSIVE PARTNERSHIPS WITH PRIVATE BUSINESSES, AS EXPRESSLY PERMITTED BY ARTICLE 29, TITLE 27 OF THE COLORADO REVISED STATUTES?  | 76%-<br>24%  |
| FALL 2011 |  |  |
| LONGMONT  | BALLOT QUESTION 2A: WITHOUT INCREASING TAXES, SHALL THE CITIZENS OF THE CITY OF LONGMONT, COLORADO, RE-ESTABLISH THEIR CITY'S RIGHT TO PROVIDE ALLSERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCES SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO PROTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE CITY AND THE SERVICE AREA OF THE CITY'S ELECTIC UTILITY ENTERPRISE? Y/N | PASS:<br>YES<br>60.82%<br>(13238),<br>NO<br>39.18%<br>(8529) |
| FALL 2009 |  |  |
| LONGMONT  | BALLOT ISSUE 2C-- AUTHORIZATION TO ALLOW THE CITY TO PROVIDE TELECOMMUNICATIONS SERVICES, ADVANCED SERVICES AND CABLE TELEVISION SERVICES TO RESIDENTIAL AND COMMERCIAL USERS WITHIN THE SERVICE AREA OF THE CITY'S ELECTRIC UTILITY ENTERPRISE  | FAIL,<br>YES<br>44%,<br>NO<br>56%                            |

[illegible]

## Tips for Getting Your Question on the Ballot and Passing It

Passing a local ballot question on SB 152 takes planning and coordination. If done properly, it is an effective way to educate the public and build widespread support and buy-in for future broadband deployment efforts.

- Start early, and find a champion in your local government agency or community. It could be an elected official, economic development director, or IT professional on staff. Get them to be the advocate for the issue and rely on them to sell the need for the change to others.
- Hold work sessions with the elected officials who will ultimately refer the question to the ballot. Make sure they understand the issues, the benefits to the community and the opposition that may be voiced by incumbent and/or local commercial service providers. Attempt to identify potential opposition early on in the process.
- Make sure you are coordinating with your municipal/county attorney and municipal clerk/county clerk and recorder on the timing of ballot preparation and any associated deadlines for submittal of ballot questions for inclusion on the ballot.
- Get the message to the voters. SB 152 is a complicated and often confusing piece of legislation and it will take time to decode its intricacies for the voting public. Keep in mind that there will be only a limited amount of time for the local government agency to tell its story to their voters before the election.
- Consider forming a citizen and/or business coalition group to carry out grass roots messaging and education about the ballot measure and the need to remove the restrictions in SB 152. This group becomes very important once the ballot issue is placed on the ballot since **government resources cannot be used to promote ballot questions**. Fair Campaign Practices Act (Section 1-45-117, C.R.S.)
- Marketing/Promotional Materials & Outreach
  - Develop core messaging that is succinct and effective (example: “Take Back Our Local Choice”)
  - Create a website to direct voters to for more information and educational materials
  - Allow citizens to sign up for e-mails that provide updates on the broadband efforts
  - Place op-ed articles in local publications (see samples below)
  - Compile a list of events and meetings where elected officials can meet voters and educate them on the ballot measure.
- Don’t “overpromise” on what an SB 152 opt-out question will do for your community. Opting out of the local government prohibition on providing indirect or direct service is only the **first step** to improving broadband service in your community.

## What is fiber-optic broadband?

Fiber-optic broadband cable can run underground or in the air on existing poles. Pulses of light allow very reliable connections and can quickly carry large amounts of data over long distances. Fiber-optic cable is a dedicated internet connection and is not shared with cable services. Fiber-optic network speeds are typically 100 megabits to 10 gigabits per second, compared to 20 to 100 megabits per second for a typical cable internet connection, or 3 megabits per second or less for traditional copper phone service.

## Does Dolores County own existing fiber?

Yes, Dolores County owns 5.5 miles of fiber.

## Are other Colorado cities exempt from SB 152?

Voters in many Colorado towns, cities, and counties have exempted themselves from SB 152, passing measures that affirm their local choice to decide how broadband services develop in these communities.

Exemptions have been approved in:

- Archuleta County
- Bayfield
- Durango
- Ignacio
- La Plata County
- Mancos
- Silverton
- San Juan County
- Telluride

## This ballot item is:

If voters approve this ballot item, Dolores County would be exempted from a state law that otherwise purports to limit local governments from improving broadband capabilities. With this exemption, the county would be permitted to establish business partnerships with private companies to increase access to high-speed broadband internet, opt to provide this service itself, or develop a combined strategy to benefit residents and business users.

## This ballot item is not:

This ballot item would not prevent any private business, including existing broadband providers, from initiating or continuing to provide these services. Dolores County has no plans to create a public broadband utility. Passage of this measure would allow the county to explore a variety of options to make assets available to serve the broadband needs of residents, students and businesses.

November 2016

## BALLOT QUESTION Exemption from SB 152

Voters residing in the Dolores County will be asked Measure 1A:

*Without increasing taxes, shall Dolores County, Colorado be legally authorized to provide any or all services and facilities currently restricted by Title 29, article 27 of the Colorado Revised Statutes, described as “advanced services”, “telecommunications services”, and “cable television services”, as defined by the statute, including, but not limited to any new and improved broadband services and high-speed internet services and facilities, based on current or future technologies, and utilizing existing or future county owned or leased infrastructure, including county wireless connections in county facilities and fiber optic connections and networks, either directly or indirectly, with or without public or private partners, to potential subscribers, which may include telecommunications service providers, and residential and commercial users within Dolores County?”*



SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS

[www.swccog.org](http://www.swccog.org)

970-779-4592

This information about SB 152 has been paid for by Southwest Colorado Council of Governments. It is not intended to urge a vote for or against this item.



Would you like the opportunity for....  
Better and More Affordable Internet Access? A Level Playing Field for Local Businesses? A More Connected and Vital Community?

## Exemption outcomes could include:

**Better Access** to high speed broadband services for residents and businesses alike.

**Intensified Innovation** by local businesses and entrepreneurs.

**Affordable Internet Access**, as Dolores partners with internet service providers and key institutions to more efficiently expand internet service.

**A Cleaner Environment**, as high speed internet reduced commuting needs and promotes high tech green jobs.

**A More Connected Community**, with new avenues for public engagement in local decision-making and new opportunities for connected social spaces and creative networking.

**Improved Quality of Life**, as local residents have better access to information in work and at home, allowing more free time to enjoy all that the surrounding area has to offer.

## Tell me more about Colorado Senate Bill 152...

*Colorado Senate Bill 05-152 (SB 152) is a measure passed by the Colorado Legislature in 2005. Its intent was to limit governments from competing with the private sector. Among other provisions, it requires local governments to secure voter approval before entering into the broadband partnerships or business. Without such approval, the law limits the ability of Colorado local governments to provide a wide spectrum of services, including:*

- free Internet service in city libraries, parks and community centers;
- leveraging government infrastructure and partnering with private businesses to provide affordable and high-speed Internet service throughout the entire community;
- direct provision of broadband services by municipal governments where needed.

## How would an exemption from SB 152 benefit Dolores County?

A voter-approved exemption from SB 152 would restore local independence and ability to evaluate all possibilities for next-generation broadband services in Dolores County.

An exemption supports local choice and options, allowing citizens to make the best decisions based on the needs of our own community, without raising taxes.

## How Can I Vote?

Ballot drop-off is located at:  
Dolores County Building  
409 N. Main St.  
Dove Creek, CO 81324

Voters may mail ballots to:  
Dolores County Clerk  
409 N. Main St.  
Dolores, CO 81324

Ballots must be received by Election Day—  
Tuesday, November 8, 7:00 pm.

## Sample Local Elected Official Op-Ed Pieces on SB 152 Ballot Questions

### **Gaiter: Broadband No Longer a Luxury**

From luxury to necessity. It's hard to not think of using the internet to do the everyday things we do: shopping, reading the news, paying bills, watching TV or emailing a friend. With the explosion in the use of the internet, and the things it's allowed us to do, the need for higher speed has also become more necessary than ever.

High-speed internet services (broadband) are not the "luxury" they were as recently as a decade ago; today they're as common as electricity. If you live in a highly-urbanized area, you might have some broadband services, although many lament these services are not sufficient. If you're in a rural area, these services might not exist at all.

Over the last several years, I've worked with internet providers and residents to explore what can be done to improve services to make internet service more dependable, faster and consistent for Larimer County residents.

However, in 2005 the Colorado Senate passed a law — Colorado Senate Bill 152 — which limits what local governments may do to improve services. Under this law, Larimer County can't let local providers use county-owned infrastructure that might be in place to enhance internet speed and service. Fortunately, the law does allow citizens of local communities to vote to exempt themselves from the constraints of this legislation.

We've watched the Colorado communities of Wellington, Estes Park, Loveland and Fort Collins ask voters to have their communities exempted from SB 152. After those communities exempted themselves from this law, their gaps in internet services are now being addressed. However, there is still a large service gap outside of and between those communities. We've had excellent conversations with the aforementioned communities on how Larimer County can help with their efforts and fill in those gaps. We hope Larimer County citizens will give us permission to move forward on those efforts.

This November, Larimer County will have an item on the ballot to ask citizens for permission to become exempt from SB 152 and join our local municipalities and internet providers in improving these services. If passed, we want to begin a study to understand the best way to provide these services. We would also seek to partner with the private sector, while looking for grants to help provide these service improvements.

These are the first steps to provide high-speed internet service county-wide, although it might be several years to fruition.

The ballot language for this item asks voters to allow Larimer County to provide high-speed internet, television and telecommunication services. The wording is a function of the way the initial law was passed. However, it's Larimer County's goal to work with our partners to provide those services and for Larimer County to perhaps provide some infrastructure to provide those services.

Many of you are most likely reading this column online, so you already know how important internet services are. We are asking for the support of all Larimer County residents — both in and out of city limits — in restoring the ability to provide high-speed broadband to all county residents.

*Lew Gaiter is the Larimer County commissioner representing District 1.*

### **Estes Park Board of Trustees Unanimously Request a Special Election Regarding Provision of Broadband Services**

On Tuesday, 11-Nov, the Estes Park Board of Trustees unanimously requested a special election regarding provision of broadband internet services. The request for a special election originated with a resolution adopted by the Estes Park Economic Development Corporation (EDC) last August. The resolution urged the Town of Estes Park to hold an election asking voters whether, without raising taxes, the Town's right should be re-established, to directly or indirectly provide telecommunications services like broadband internet. The resolution resulted from an extensive investigation by the Competitive Broadband Committee of the Estes Park EDC into how to achieve a key goal in the Town's 2014 Strategic Plan: "to encourage optimal use of the Platte River Power Authority and Town's fiber infrastructure."

Why is this important? To have a strong economy, Estes Park must have access to competitive broadband service. This is true because of how important the internet has become in our economic and social lives. The availability of competitive broadband already determines where businesses locate, where travelers visit, and where people choose to live. The economic and social importance of access to competitive broadband will only increase over time. "Competitive broadband" means the level of internet service that is currently available in large US cities in terms of speed, cost, and reliability. Competitive broadband in the Estes area would help keep our schools, businesses, and homes competitive in our region and nationally.

Colorado Senate Bill 152 took away our local government's right to decide the best way for the Town to help provide competitive broadband service. Senate Bill 152 blocks local government's involvement in directly or indirectly providing broadband service. Senate Bill -152 applies to Estes Park because, with the Platte River Power Authority, the Town already indirectly provides

broadband service through its involvement in the fiber optic infrastructure used for local broadband service.

Given Senate Bill 152, an election is the only way to restore local authority and free local governments from the bills' restrictions. So, to achieve the Town's goal of "optimal use of the Platte River Power Authority and Town's fiber infrastructure," we must have an election to take back our Town's right to decide the best way to help provide competitive broadband.

There have been many different and successful approaches to local government involvement in providing competitive broadband services, and many are indirect like Estes Park's involvement currently. One purpose of the recent U.S. Department of Commerce, Economic Development Administration \$300,000 grant award to the Town of Estes Park and Estes Park EDC is to develop options for a state of the art, Valley-wide, broadband service that will allow our businesses, citizens, and guests to participate in and compete in the global marketplace.

Recently, there has been widespread Colorado involvement with the issues of broadband, the economic development impact of broadband, and Senate Bill-152. Estes Park is not alone in dealing with these issues. Earlier, Longmont, Centennial, and Montrose voters resoundingly approved taking back the right of local government to decide on broadband issues. In last Tuesday's election, 5 municipalities, Boulder, Cherry Hills Village, Red Cliff, Yuma and Wray, and 3 counties: Rio Blanco, San Miguel, and Yuma voted overwhelmingly, with 70 to 80 percent voter approval, to take back the right taken away by Senate Bill 152.

In summary, Estes Park must have access to competitive broadband to remain economically competitive. Senate Bill 152 took away the Town's right to directly or indirectly provide broadband service. The proposed election is the only way to take back the right that Senate Bill 152 took away so that the Town can pursue optimal use of its fiber optic infrastructure, and so that we have access to state of the art, Valley-wide, competitive broadband service.

## Six Broadband Questions Every Local Government Official Should Be Asking

- 1) **What is the current average download/upload capacity in our community?** The State of Colorado maintains a map showing advertised download/upload speeds around the state. The map is a useful tool, allowing the user to isolate his/her search by jurisdiction if needed. However, much of the data in the map is based on vendor reporting and may or may not be completely accurate. You can access the map at <http://maps.co.gov/coloradobroadband/>. This website also features an online Internet speed test with which you can test and verify the upload/download speed of the Internet connections in your county.

Understanding the speed of a connection is only a part of the equation, though. It is also critically important to understand what *technologies* are providing that bandwidth and speed. In other words, you need to understand the underlying physical transport – is it wireless, fiber optic, copper or coaxial? If it is wireless, is it terrestrial or satellite? While the latter may have great coverage, there are simple physical characteristics that render certain technologies unsuitable for real time voice, data or telepresence. Each type of system has its strengths and weaknesses; each needs to be assessed in light of local needs, capabilities, and constraints.

- 2) **What are the key institutions in the community and what are their service needs?** It is important to identify key institutions (schools, colleges, hospitals, libraries, local governments, etc.) and determine both their existing broadband capabilities and service needs going forward. As you assess how to proceed, can you create successful public-private partnerships with local providers who have proven to be reliable community partners? Or are you in a situation where the local providers need to be encouraged to more aggressively deploy the latest technologies?
- 3) **Who are the key telecommunication providers in the region? And what is the best way to talk to these providers?** Most areas of the state have a mixture of local providers as well as larger statewide carriers (CenturyLink, Comcast, TDS, AT&T, Verizon, etc.). Understanding what services these different carriers provide (phone, video, Internet, etc.), their service areas and the costs of coverage is critical not only to gaining an understanding of the broadband potential in your community but to ensuring that your area is adequately and sustainably served.

- 4) **What are the needs of business and industry in your community?** Each business owner has a unique set of needs and these will drive varying Internet capacity needs (both upstream and downstream). These might include video conferencing, virtual private networks (VPNs), voice over Internet protocol (VoIP), ability to share schematics (some in 3D), and traditional online needs like credit card and payroll processing. Economic development groups have identified broadband infrastructure and services as an essential component in the Colorado Blueprint.  
<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=OEDIT%2FOEDITLayout&cid=1251595201237&pagename=OEDITWrapper>
- 5) **Is your network “future-proof?”** Given the rapidly evolving technical advancements in the high-tech industry, it is difficult to predict what the “next big thing” is going to be. Planning for enhanced future capacity and adaptability is absolutely essential to the long-term success of your local economic development efforts. Most industry experts agree that fiber optic cable will have a life of 30-50 years. None of the experts are predicting that fiber will become obsolete during its useful life. What will change over its useful life is the electronics that are used to “light” the fiber optic cable. We expect improving technology will increase the amount of data that can be transported across a single fiber with the new technology. These changes can be phased in as the electronics reach their end of life.
- 6) **How can I aggregate demand among key anchor institutions and employers?** A key approach for any community is to determine how much demand the anchor institutions and employers currently have. Knowing this information provides the community with leverage when working with providers and potential carriers to get what the community needs. It also allows a community to “speak with one voice” when confronting the complexities of broadband deployment and establish a better understanding of the economics of the telecommunications environment.

*Reprinted from CCI's “What Every Commissioner Needs to Know About Broadband” (2011)*

## Additional Resources

Colorado Department of Regulatory Agencies – Broadband Fund

<https://www.colorado.gov/dora-broadband-fund>

Rio Blanco County: Plan Your Own Project – A Broadband Blueprint

<http://www.rbc.us/401/Plan-Your-Project-Blueprint>

Colorado Department of Local Affairs – Broadband Program

<https://www.colorado.gov/pacific/dola/broadband-program>

Colorado Broadband Portal

<http://broadband.co.gov/>

Colorado Broadband Data and Development Program

<http://www.oit.state.co.us/broadband>

Northwest Colorado Council of Governments Memorandum on Opting Out of SB 152

<http://nwccog.org/wp-content/uploads/2017/03/SB-152-Opt-Out-MEMO-April-2017-NWCCOG-1.pdf>

National Association of Counties Podcast: Innovations in Rural Broadband Delivery

<http://www.naco.org/resources/innovations-rural-broadband-delivery>

Access and Inclusion in the Digital Age: A Resource Guide for Local Governments

[http://nationalresourcenetwork.org/en/Document/306284/Access and Inclusion in the Digital Age A Resource Guide for Local Governments](http://nationalresourcenetwork.org/en/Document/306284/Access%20and%20Inclusion%20in%20the%20Digital%20Age%20A%20Resource%20Guide%20for%20Local%20Governments)



## Glossary

**Backhaul:** The portion of a broadband network in which the local access or end user point is linked to the main Internet network.

**Bandwidth:** bandwidth refers to how fast data flows through the path that it travels to your computer; it's usually measured in kilobits, megabits or gigabits per second.

**Broadband:** broadband comes from the words "broad bandwidth" and is used to describe a defined high-speed connection to the Internet. A broadband connection lets you instantly connect to the Internet or your corporate network at speeds many times faster than a dial-up connection.

**Cable modem:** refers to the type of broadband connection that brings information to homes and businesses over ordinary television cable lines.

**Dark fiber:** optical fiber that is not lit or not activated for use.

**DSL:** stands for digital subscriber line; it refers to the type of broadband connection that brings information to homes and businesses over ordinary copper telephone lines.

**Downstream speed:** refers to the speed at which data flows from the information server to your computer.

**ISP:** Internet Service Provider. A company that offers customers access to the Internet.

**Last mile:** refers to the connectivity to the home, business, or to a "node" where additional Internet connectivity can occur.

**Kbps:** Stands for Kilobits per second, or thousands of bits per second. For example, most analog modems transmit at 56 Kbps or 28.8 Kbps.

**Mbps:** Stands for Megabits per second, or millions of bits per second. This is a measurement of how much data can be transmitted through a connection. For example, 6.0 Mbps is 200 times faster than a 28.8 Kbps analog modem.

**Middle mile:** any carrier-to-carrier wholesale communications infrastructure with a single point of demarcation that does not connect directly to end users or to end-user facilities and that may include interoffice transport, backhaul, Internet connectivity, or special access. Middle mile infrastructure can range from a few miles to a few hundred miles. They are often constructed of fiber optic lines, but microwave and satellite links can be used as well.

**Satellite:** refers to the type of broadband connection where information is sent from and arrives at a computer through satellite dishes

**Upstream speed:** refers to the speed at which data flows from your computer to the information server

**Wireless:** refers to the type of broadband connection where information is sent from and arrives at a computer through transmission towers

*(Source: Broadband 101: The Unofficial Dictionary, produced by Nevada County, California)*

*The Knowledge Now series features practical research on timely topics from the Colorado Municipal League.*

## BROADBAND: THE VOTERS HAVE SPOKEN, WHAT'S NEXT?

The nation is experiencing a major evolution in communications that is pulling in municipal government as a key player. High-speed Internet connectivity is transforming from a rarity into a necessity. The demand for high-speed connections from businesses and residents is driven by the large amounts of data transfer needed to support Internet video, business transactions, health care facilities, schools, and online gaming. And we want it everywhere we go. We want it on our PCs, laptops, and phones.

Are we seeing broadband Internet emerge as the new public utility? Are we experiencing the same public demand seen a century ago for universal telephone service, resulting in government action? The answers to these questions are beginning to unfold in Colorado and across the country. Broadband infrastructure is expensive to build and often the

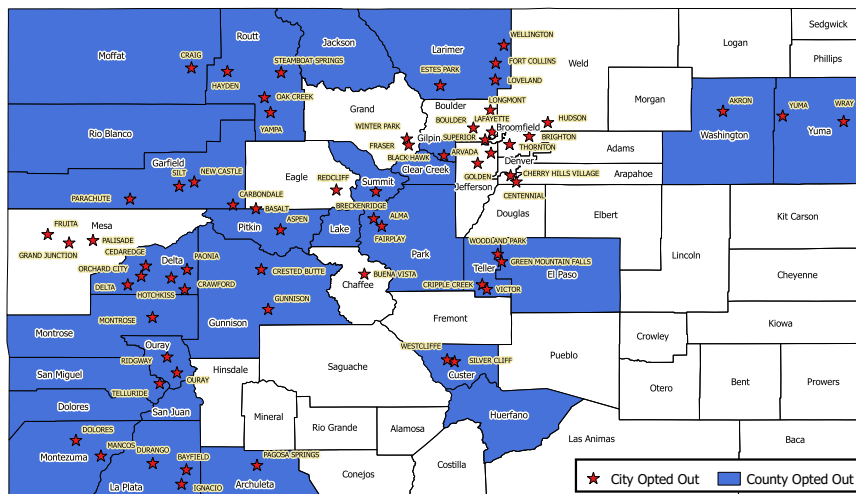
returns are not there to create a business model that will “pencil out” for a private provider. Yet, in 2005, the Colorado legislature passed a law excluding local government from entering the broadband market. SB 05-152 does provide an escape hatch for municipal residents: They can vote to exempt their municipal or county government from that restriction. To date, voters in 65 cities and towns have done just that — a list expected to continue to grow in the future.

A just released 2017 study from the National League of Cities finds that municipalities establish broadband networks for a wide range of reasons, including “increased residential property values, increased commercial business activity, and to spur viable employment options in isolated communities. Broadband opens doors to education, healthcare, recreation and business growth.” Closer to home, Fort Collins Deputy City Manager Jeff

Mihelich notes that universal broadband service provides a community with an economic advantage in attracting and retaining talent and providing for merchant services and cloud based businesses. As it formulates a broadband service plan, the City of Fort Collins is pursuing four objectives: network buildout reaching all residents, timely implementation, competitive market pricing, and outstanding customer service.

Voters' voices have been loud and clear in elections allowing municipal government in Colorado to provide broadband service. All 65 cities and towns that have asked have been given permission. The vote is in. Municipal government gets the green light. What happens next? This Knowledge Now provides examples from four Colorado municipalities with four different approaches to next steps after the vote.

**Local Governments Repealing Prohibition on Public Investment in Broadband**



Map Revision: November 9, 2016



Map by Trent Pingston

## IMPLEMENTING A FIBER MASTER PLAN

*By Eric Eddy, Centennial assistant to the city manager*

In November 2013, 76 percent of Centennial residents voted in favor of ballot question #2G, repealing certain parts of the SB 05-152 restrictions placed on all local governments in Colorado. The passing of this ballot question allows the City to indirectly provide services through competitive and nonexclusive partnerships with private businesses. Since that time, the City of Centennial has worked to implement its Fiber Master Plan, culminating in the installation of a City-wide, carrier-grade, competitively-neutral, dark fiber backbone.

Centennial's efforts began by cataloguing the existing City-owned fiber through an asset inventory. Simultaneously, the City examined potential partnership opportunities to benefit stakeholders through a series of meetings with community anchor institutions, such as fire districts, law enforcement, schools, and libraries. In

addition, meetings took place with incumbent providers, private businesses, and residents. The information gathered was presented to city council as an analysis of options. Ultimately, this led to council direction to develop a Fiber Master Plan, which would guide the implementation and next steps of the installing the fiber backbone.

A consultant firm was hired to conduct a strategic planning and feasibility study, focusing on the data gathered in the opportunity analysis resulting in the development of the Centennial Fiber Master Plan. Additional public outreach was conducted with anchor institutions and private businesses to discuss next steps of the plan execution. Council considered a range of alternatives, from doing nothing to implementing City-owned fiber-to-the-home. Ultimately, the council-adopted Fiber Master Plan identified the City's goal

as developing a City-wide dark fiber backbone to enable competition throughout Centennial.

In late 2016, the City began construction of its dark fiber backbone, with the first phase connecting the City's Public Works Yard with the City offices. Additional construction will be ongoing throughout 2017 and into 2018. This dark fiber will be available to the private sector and others on a competitively-neutral basis, eventually enabling competition and ensuring the City maintains control over its destiny into the future.

There is no one-size-fits-all framework for Colorado municipalities when it comes to fiber and related efforts. Each municipality should consider its strengths and weaknesses and develop a defined strategy and policy to address community goals.

## OUR GOAL IS BECOMING A GIGABIT COMMUNITY

*By Glen Black, Delta community development director*

For several years, the City of Delta has been looking for ways to bring affordable high-speed broadband to the area.

Affordable broadband was identified as the key economic development factor for Region 10 communities during a USDA Stronger Economies Together training process and report. That report just confirmed what we already knew from the many requests for better Internet service from local businesses and residents.

Inadequate broadband has retarded business growth. Economic development efforts have been hampered by a lack of high-speed broadband according to several potential businesses that would not consider locating in Delta after determining lack of broadband.

If there was any doubt about public demand, it was laid to rest by the results of Delta's SB 05-152 exemption election that passed with a 71 percent "yes" vote. Citizens told the City to get

involved in bringing better service to the community.

One of the first steps the City took was working with Eagle-Net Alliance to try and bring fiber to Delta. Eagle-Net is an intergovernmental entity operating under a federal grant to provide broadband connections for schools, libraries, and government facilities. Unfortunately it was unable to complete its Delta project.

Delta then took the bull by the horns in forming a cooperative effort through the state's Region 10 partners, including Delta County, City of Montrose, and the Delta Montrose Electric Association (DMEA) in phase one of a regional approach with sights set on Delta becoming a gigabit community. The Region 10 partnership is building the middle-mile backbone that will spread broadband availability throughout Delta via both underground and aerial infrastructure. Work has been progressing rapidly, the infrastructure for phase one is expected to be completed by mid-year.

Funding such an ambitious project requires millions of dollars and has only been possible through major grants from the Colorado Department of Local Affairs and the Economic Development Administration, along with significant contributions from DMEA, Region 10, the El Pomar Foundation, and participating local governments.

Once the backbone is up and running, the final step is the last-mile connections to hook up businesses and residences. DMEA has created a for-profit company (Elevate Fiber), which is an ISP provider for fiber connections from the middle mile to the end user. This cooperative construction of broadband infrastructure has stimulated renewed interest from private Internet service providers looking to provide last mile connections. What a great result this will be for consumers — high speed broadband in a competitive environment.

## TURNING ON THE NEXTLIGHT™

By Scott Rochat, Longmont Power & Communications public relations and marketing specialist

Longmont's community-owned fiber-optic network, NextLight, is due to complete network construction this year, achieving a vision that has been more than 20 years in the making for Longmont Power & Communications.

It began in 1996 with a proposed upgrade to the electric substation communications connections. In a white paper to city council, Longmont Power & Communications (LPC) noted that fiber-optics could offer the speed and reliability needed — and that with additional fibers, the resulting loop could be the core of a citywide broadband network.

The 17-mile loop was built in 1997. But creating a network to provide services took longer. LPC first looked for a private partner, reaching an agreement with Adesta Communications in 2000. But in 2001, Adesta filed for bankruptcy, starting the process over.

In 2005, Senate Bill 152 barred local governments from involvement in telecommunications with limited exceptions. A community could vote to exempt itself, and Longmont ultimately did so in 2011, emphasizing that the measure would re-establish a local right that had been taken away and that no tax dollars would be used to build the network. That year, opponents spent nearly \$420,000, but the measure passed with about 60 percent in favor.

By 2013, a business plan was ready and another vote approved up to \$45.3 million in bonds for the build. The initial timeline called for a six-phase build out, with construction starting August 2014. By October, the NextLight name was unveiled, reflecting Longmont's history of providing electric power for itself since 1912. Now, light through fiber would be the "next light." This time, no private partner took part.

When the first service areas opened in November 2014, signup requests quickly overwhelmed the call center and the installation schedules. By spring, a new schedule accelerated construction to answer the demand.

One significant driver has been the Charter Member rate, which offers a \$49.95-per-month symmetrical gigabit connection to residential users who sign up quickly. With that incentive, average take rates are consistently above 50 percent in areas that have been through the Charter Member process.

Some of the key lessons learned have included:

- Be open to changing design and procedures during construction. There will always be new factors and technologies to consider.
- Start early in securing access agreements with multi-dwelling units and similar managed properties.

- All municipal personnel are potential marketers. Make them excited about this!
- Carefully assess the impacts on those outside the utility, including permitting agencies and locating firms.
- Building a brand new utility encompasses myriad details. For Longmont, that included new billing software, significant time on website updates and social media, space for a call center and other added employees, new policies and SOPs for details such as online piracy, and specialized tax and federal filing requirements.

Even after the initial build out, the network will grow with Longmont, providing a powerful tool for homes and businesses alike. Even with so much accomplished, NextLight's story has only just begun.





## MEETING TODAY'S BROADBAND EXPECTATIONS

By Vince O'Connor, Steamboat Springs information services manager

Steamboat Springs' efforts to improve Internet broadband service began before city council sent a SB 152 exemption ballot question to voters in 2015. Frustration with Internet speeds had been mounting among residents and the business community as existing networks had been tapped out. This was of special concern as commerce in today's economy and future business development are dependent on reliable, high-speed Internet connections. Steamboat's many visitors have also have come to expect the availability of high-speed Internet service.

Citing the need for faster broadband, the City joined forces with the Steamboat Springs School District, the Yampa Valley Medical Center, and Yampa Valley Electric Association to form the Northwest Colorado Broadband Consortium. The voters approved the SB 152 exemption giving

the City the green light to improve broadband service. The consortium set to work to better serve local government needs and bring superior bandwidth to the entire community by providing the backbone for the local system. A Wyoming company brought in the initial fiber pipeline from Denver, and efforts continue to create redundancy to the initial pipeline. The consortium is the middle-mile provider and is laying fiber optic underground and stringing wire overhead throughout the city, with 60 percent completion on the main trunk line and lateral lines.

The multimillion dollar project has been financed through a combination of private funds, local government dollars, and a Colorado Department of Local Affairs grant. Project completion is expected sometime next year.

The plan always has been for the City to be the middle mile and hand-off to

private businesses for the actual hook-ups for end users. The public backbone network is open to all private Internet providers to tap into and provide consumer service connections.

As the system is being built out, the results are dramatic — better service for lower cost. Businesses and residents will see a many-fold increase in Internet speeds available. The system provides municipal government with enough bandwidth to satisfy not only its internal demands, but to meet the needs of the city's many visitors by offering free WiFi at several hotspots located throughout the city from which anyone can access the Internet from their phones or laptops.

Through this community cooperative venture residents, businesses, and local governments will all come out ahead.

## STATE PLAYING A BIG ROLE SUPPORTING BROADBAND

By Rachel Harlow-Schalk, Colorado Department of Local Affairs Division of Local Government deputy director

The Colorado Department of Local Affairs (DOLA) broadband initiative began as a result of growing demand from rural Colorado to plan for and resolve community broadband service needs. DOLA recognizes that provision of high-speed broadband services can play a critical role in enhancing local government operations and community development efforts.

In 2015, DOLA kicked off its \$20 million initiative within the Energy and Mineral Impact Assistance Fund (EIAF) to improve broadband in rural Colorado by working with communities and state partners. While the dollars are no longer set aside for just broadband grants, local governments still can apply for funds through primary EIAF grant program. Funding is offered for regional

broadband plans, sub-plans for counties and municipalities, and middle-mile infrastructure projects.

- Applications for planning grants may be submitted at any time. Such applications shall be reviewed by the EIAF Advisory Committee and approved administratively.
- Applications for infrastructure (middle-mile) projects are made through the regular cycles of the Energy Mineral Impact Program, with three application deadlines per year.
- Applications for both planning and infrastructure are subject to review and comment by the Office of Information Technology, Office of Economic Development and International Trade, and the relevant Council of Governments.

The most successful grant applications are those that are developed and coordinated prior to submittal in consultation with local government's respective regional manager.

The scope of a successful application will define a regional or countywide/municipal area that examines current assets, gaps in services, applicable matching funds to the grant, and a demonstrable effort to cooperate with private-sector partners on the implementation. All middle-mile grant funded projects must be included in a regional or sub-plan prior to funding. This program does not fund last mile infrastructure.

Contact your DOLA regional manager for more information at [dola.colorado.gov/regmanagers](http://dola.colorado.gov/regmanagers).

## **Rio Blanco County Stays Relevant with Broadband**

*By Masha Zager / Broadband Communities*

Colorado became a hotbed of community broadband activity several years ago when dozens of cities and counties began voting to override restrictive state legislation and take control of their broadband destinies. In November 2016 alone, 26 localities held broadband referenda; all 26 referenda passed, most of them by wide margins.

Rio Blanco County, a rural county in northwestern Colorado with a population of less than 7,000, held an override vote in 2014 and is now connecting customers to Rio Blanco Broadband, a network that will deliver fiber or wireless broadband access to nearly all premises. However, its story began much earlier, in 1999, when the school district in Meeker, the county seat, linked its buildings with fiber. Once the school network was up and running, the town of Meeker, the local library and the county hospital all requested to use the school district's dark fiber – and the Meeker Metropolitan Area Network (Meeker MAN) was born. “It ran for a decade and a half, and we had an abnormal amount of IT cooperation,” says Blake Mobley, who was the IT director of the school district during that period.

In 2014, when the county decided to implement a modern broadband system, it recruited Mobley to be the county IT director because of his experience with the Meeker MAN. “It was the perfect storm,” Mobley says. “There was grassroots desire for broadband, the county commissioners were on board, the county had money to proceed and I had some experience with broadband.”

The county set a goal of obtaining the fastest internet access it could for as many people as it could and offering it at Google-type pricing (\$70 for gigabit service). Formulating the policy goal in this way – rather than setting goals in terms of economic development or return on investment – was the first unique aspect of the project.

Mobley explains, “One way a project can fail is if you set a publicly stated goal, such as return on investment, the number of years it takes to get your money back or a specific take rate. As soon as you make a public statement like that, you can be held up as an example of failure. So we chose a different approach: Our goal was to build a modern infrastructure so the community would have an option. ... We had to look at this as a purchase, not an investment.” The county's website explains that broadband isn't about “getting ahead as a community” as much as “maintaining relevancy as a community.”

## **Getting Started**

The county published a broadband plan in June 2014 calling for fiber to the home in the two towns of Meeker and Rangely and wireless broadband (at least in the short term) for the remaining one-third of county residents who live far from any population centers. A referendum in November 2014 gained 82 percent approval, and the county allocated money from its general fund to start the project. The following month, the Colorado Department of Local Affairs (DOLA) set aside money for networks that would connect community anchor institutions, and Rio Blanco County was one of two counties awarded first-round funding.

The county originally intended to find a single partner that could build and operate the network and deliver services to residents. This approach might have worked for a larger municipality, but as it turned out, Mobley says, “there wasn’t really a single company that could do all this in a small market.” After some rethinking, Rio Blanco County decided to split up the project and work with several private partners.

## **Constructing the Network**

First, the county decided to contract directly with several construction partners. In July 2015, it hired Circle H Construction to build fiber to the curb in the towns of Meeker and Rangely. That construction project is nearly finished. The county also entered into an IRU, or long-term lease, for two strands of fiber between Meeker and Rangely, which are about 60 miles apart. The link between the two cities enables them to share a middle-mile connection.

In spring 2016, the county contracted with Centerline Solutions to design and engineer the rural wireless network. With help from a second DOLA grant, construction of the wireless network began a few months later with the building of several new towers and the repurposing of several existing county towers. A final construction phase, which will include more than 20 small towers to reach the most remote parts of the county, is still pending approval by the commission and possible state support. “It’s a modular solution,” Mobley says. “We may change the implementation timeline and approach.”

The towers will support fixed wireless broadband with a 25 Mbps/5 Mbps top speed offering, using Cambium equipment operating on either unlicensed or lightly licensed frequencies. In addition, the towers are already being used by private carriers to improve cellular reception, and eventually they will be used for emergency communications as well.

Another task the county took on was to create data centers in Rangely and Meeker. An empty building in Rangely became the central office and network operations center; the remodeling of the



courthouse in Meeker will make room for a data center in 2017. Calix equipment is being used in the central office and at customer premises.

### **It Takes a Community**

To build the fiber drops, operate and maintain the network, obtain wholesale internet bandwidth and recruit and manage retail service providers, the county turned to the Colorado Fiber Community (CFC). CFC is a consortium that consists of project manager OHIvey, Blue Tail Consulting and Beehive Broadband, a Utah ISP, along with several (mostly local) design and construction partners.

The county wanted to give customers a choice of retail service providers, so CFC approached the two fixed wireless broadband providers in the county, Local Access Internet and Cimarron Telecommunications, and invited them to deliver services on Rio Blanco Broadband. Both jumped at the chance. Says Paul Recanzone of CFC, “We’ll allow as many providers as the market will support, but at the moment, that’s two. ... A handful of others in Colorado were interested, but we have indicated to them what the market conditions are, and they will wait.”

The retail providers were trained to install optical network terminals (ONTs) at customer premises and are now adding customers in Meeker and Rangely. In part because they already had wireless customers in the two towns and had name recognition, they achieved a 67 percent take rate right out of the gate with little or no marketing.

Though the two retail service providers are off to a strong start, CFC is aware that open-access networks are vulnerable to sudden exits of service providers. (For example, the Utah open-access network UTOPIA lost several service providers in its early years.) Keeping that experience in mind, Beehive Broadband, the CFC partner that serves as network operator, is prepared to step in as a backup service provider if necessary to ensure that customers won’t be stranded.

CFC’s role as wholesaler of internet services transformed the economics of broadband in the county. Neither of the two retail service providers had the market power to buy backhaul or wholesale services at competitive rates. CFC (through Beehive Broadband) supplies internet backhaul to the retailers at about one-fifth the price the retailers pay as independent WISPs. Because CFC can also acquire other services at reasonable rates, the retailers should soon be able to offer such services as voice, IPTV and home security.

Mobley says that CFC may not need to continue supplying wholesale services as the system matures (though it will continue to operate the network). He comments, “It’s definitely our goal to get to

that more common model of open access where the network is the transport layer and the value-added resellers [retailers] can go out and secure their own services.”

### **Sharing the Profits**

The county’s agreement with CFC is an unusual one based on profit sharing. According to Recanzone, CFC subtracts certain operational costs from the revenue stream each month and then keeps 40 percent of the remainder, remitting the other 60 percent to the county.

To make matters more complicated, the county wants to own the drop cables and ONTs – which is important if it ever needs to replace the network operator – but CFC is responsible for incurring the \$1,100 per customer cost to purchase and install this infrastructure. So, at present, the county’s revenue share is applied toward repayment of CFC’s installation expenses, which will continue until the repayment is complete.

According to Recanzone, CFC did everything possible, and then some, to minimize startup costs, and it reached operational breakeven after only four months, in October 2016. It has already begun applying the county’s share of profits to accruals for the drop infrastructure, and it expects to apply its own share to debt service for the next five years or so. (No one ever said building rural broadband was easy.)

### **Support for Anchor Institutions**

Because the public anchor institutions in Meeker had a long history of cooperating on the Meeker MAN, Mobley wanted to replicate that spirit of cooperation on the Rio Blanco Broadband network – not just in Meeker but countywide. Rather than run a single strand of fiber to each community anchor institution, Rio Blanco Broadband ran four strands to each and aggregated the fibers in the data center. It also reserved half the data center space for these institutions to use as they chose, rent free. “There was no way they could afford anything like this,” Mobley says, “but our added cost to implement it was a very small percentage of the total cost.”

The anchor institutions have a range of options in using these resources. For example, Mobley says, they could create private networks to link multiple facilities, locate core switches in the data centers, share resources (such as firewall equipment) with other institutions or trade space with an institution in the other data center to locate backup equipment.

In addition, the anchor institutions will be able to purchase engineering, maintenance or technical expertise from Rio Blanco Broadband. Mobley expects most of the public anchor institutions in the county to take advantage of these opportunities.

## **Economic Development**

Even without specific economic development goals for the network, county officials are keenly aware of its potential to attract, retain and support businesses. Fiber was laid several miles beyond the town limits of Meeker and Rangely to connect businesses outside the towns, and Mobley says it could be extended farther if the county can obtain funding to do so (or if profit-sharing remittances from the current network become available). “I see the network as a negotiating tool,” says Katelin Cook, the county economic development director. “If getting fiber to the door will seal the deal, we’ll do everything in our power to do that.”

Cook says the county hopes to encourage economic diversification by attracting individuals and small businesses that are location neutral and attracted by Rio Blanco County’s quality of life. Data centers and data backup facilities are also good candidates for recruitment. In partnership with the Chamber of Commerce, Cook is helping companies already located in the county explore how they can use the network to enhance their businesses.

Rio Blanco County is already showing up on site selectors’ lists. Cook says that, before even starting a formal marketing program, she has fielded inquiries from about a dozen companies. “For me, that’s exciting,” she says. “We’re now being seen as a viable business option.”

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**NOTE:** This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 05-152

BY SENATOR(S) Veiga, and Mitchell;  
also REPRESENTATIVE(S) Jahn, Crane, Harvey, Kerr, and Sullivan.

CONCERNING LOCAL GOVERNMENT COMPETITION IN THE PROVISION OF  
SPECIFIED COMMUNICATIONS SERVICES.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Title 29, Colorado Revised Statutes, is amended BY  
THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 27**  
**Competition in Utility and Entertainment Services**

PART 1  
COMPETITION IN UTILITY  
AND ENTERTAINMENT SERVICES

**29-27-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY  
HEREBY FINDS AND DECLARES THAT IT IS THE POLICY OF THIS STATE TO  
ENSURE THAT CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE,  
AND HIGH SPEED INTERNET ACCESS, OTHERWISE KNOWN AS ADVANCED  
SERVICE, ARE EACH PROVIDED WITHIN A CONSISTENT, COMPREHENSIVE, AND

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

NONDISCRIMINATORY FEDERAL, STATE, AND LOCAL GOVERNMENT FRAMEWORK.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THERE IS A NEED FOR STATEWIDE UNIFORMITY IN THE REGULATION OF ALL PUBLIC AND PRIVATE ENTITIES THAT PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE.

(b) MUNICIPAL ORDINANCES, RULES, AND OTHER REGULATIONS GOVERNING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IMPACT PERSONS LIVING OUTSIDE THE MUNICIPALITY.

(c) REGULATING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IS A MATTER OF STATEWIDE CONCERN.

**29-27-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADVANCED SERVICE" MEANS HIGH-SPEED INTERNET ACCESS CAPABILITY IN EXCESS OF TWO HUNDRED FIFTY-SIX KILOBITS PER SECOND BOTH UPSTREAM AND DOWNSTREAM.

(2) "CABLE TELEVISION SERVICE" MEANS THE ONE-WAY TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE, AS WELL AS SUBSCRIBER INTERACTION, IF ANY, THAT IS REQUIRED FOR THE SELECTION OR USE OF THE VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE.

(3) "LOCAL GOVERNMENT" MEANS ANY CITY, COUNTY, CITY AND COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

(4) "PRIVATE PROVIDER" MEANS A PRIVATE ENTITY THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(5) "SUBSCRIBER" MEANS A PERSON THAT LAWFULLY RECEIVES

CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE. A PERSON THAT UTILIZES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE PROVIDED BY A LOCAL GOVERNMENT FOR LOCAL GOVERNMENTAL OR INTERGOVERNMENTAL PURPOSES AND IS USED BY PERSONS ACCESSING GOVERNMENT SERVICES IS NOT A SUBSCRIBER FOR PURPOSES OF THIS ARTICLE.

(6) "TELECOMMUNICATIONS SERVICE" HAS THE SAME MEANING AS SET FORTH IN SECTION 40-15-102 (29), C.R.S.

**29-27-103. Limitations on providing cable television, telecommunications, and advanced services.** (1) EXCEPT AS PROVIDED IN THIS ARTICLE, A LOCAL GOVERNMENT SHALL NOT:

(a) PROVIDE TO ONE OR MORE SUBSCRIBERS CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE ANY FACILITY FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS.

(2) FOR PURPOSES OF THIS ARTICLE, A LOCAL GOVERNMENT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE IF THE LOCAL GOVERNMENT PROVIDES THE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS:

(a) DIRECTLY;

(b) INDIRECTLY BY MEANS THAT INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:

(I) THROUGH AN AUTHORITY OR INSTRUMENTALITY ACTING ON BEHALF OF THE LOCAL GOVERNMENT OR FOR THE BENEFIT OF THE LOCAL GOVERNMENT BY ITSELF;

(II) THROUGH A PARTNERSHIP OR JOINT VENTURE;

(III) THROUGH A SALE AND LEASEBACK ARRANGEMENT;

(c) BY CONTRACT, INCLUDING A CONTRACT WHEREBY THE LOCAL GOVERNMENT LEASES, SELLS CAPACITY IN, OR GRANTS OTHER SIMILAR RIGHTS TO A PRIVATE PROVIDER TO USE LOCAL GOVERNMENTAL FACILITIES DESIGNED OR CONSTRUCTED TO PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE FOR INTERNAL LOCAL GOVERNMENT PURPOSES IN CONNECTION WITH A PRIVATE PROVIDER'S OFFERING OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(d) THROUGH SALE OR PURCHASE OF RESALE OR WHOLESALE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF A LOCAL GOVERNMENT TO LEASE TO A PRIVATE PROVIDER PHYSICAL SPACE IN OR ON ITS PROPERTY FOR THE PLACEMENT OF EQUIPMENT OR FACILITIES THE PRIVATE PROVIDER USES TO PROVIDE CABLE TELEVISION, TELECOMMUNICATIONS, OR ADVANCED SERVICES.

## PART 2 CONDITIONS FOR PROVIDING SERVICES

**29-27-201. Vote - referendum.** (1) BEFORE A LOCAL GOVERNMENT MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE, AN ELECTION SHALL BE CALLED ON WHETHER OR NOT THE LOCAL GOVERNMENT SHALL PROVIDE THE PROPOSED CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(2) THE BALLOT AT AN ELECTION CONDUCTED PURSUANT TO THIS SECTION SHALL POSE THE QUESTION AS A SINGLE SUBJECT AND SHALL INCLUDE A DESCRIPTION OF THE NATURE OF THE PROPOSED SERVICE, THE ROLE THAT THE LOCAL GOVERNMENT WILL HAVE IN PROVISION OF THE SERVICE, AND THE INTENDED SUBSCRIBERS OF SUCH SERVICE. THE BALLOT PROPOSITION SHALL NOT TAKE EFFECT UNTIL SUBMITTED TO THE ELECTORS AND APPROVED BY THE MAJORITY OF THOSE VOTING ON THE BALLOT.

**29-27-202. Exemption for unserved areas.** (1) A LOCAL GOVERNMENT SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS PART 2

AND MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCE SERVICE IF:

(a) NO PRIVATE PROVIDER OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE PROVIDES THE SERVICE ANYWHERE WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT;

(b) THE GOVERNING BODY OF THE LOCAL GOVERNMENT HAS SUBMITTED A WRITTEN REQUEST TO PROVIDE THE SERVICE TO ANY INCUMBENT PROVIDER OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT; AND

(c) THE INCUMBENT PROVIDER HAS NOT AGREED WITHIN SIXTY DAYS OF THE RECEIPT OF A REQUEST SUBMITTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1) TO PROVIDE THE SERVICE OR, IF THE PROVIDER HAS AGREED, IT HAS NOT COMMENCED PROVIDING THE SERVICE WITHIN FOURTEEN MONTHS OF THE RECEIPT OF THE REQUEST.

### PART 3 COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REGULATIONS

**29-27-301. General operating limitations.** (1) A LOCAL GOVERNMENT THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE UNDER THIS ARTICLE SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES, AND REGULATIONS GOVERNING PROVISION OF SUCH SERVICE BY A PRIVATE PROVIDER; EXCEPT THAT NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT THE JURISDICTION OF THE PUBLIC UTILITIES COMMISSION WITH RESPECT TO MUNICIPAL UTILITIES.

(2) (a) A LOCAL GOVERNMENT SHALL NOT MAKE OR GRANT ANY UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE TO ITSELF OR TO ANY PRIVATE PROVIDER OF CABLE TELEVISION SERVICES, TELECOMMUNICATIONS SERVICES, OR ADVANCED SERVICES.

(b) A LOCAL GOVERNMENT SHALL APPLY WITHOUT DISCRIMINATION AS TO ITSELF AND TO ANY PRIVATE PROVIDER THE LOCAL GOVERNMENT'S ORDINANCES, RULES, AND POLICIES, INCLUDING THOSE RELATING TO:



- (I) OBLIGATION TO SERVE;
- (II) ACCESS TO PUBLIC RIGHTS-OF-WAY;
- (III) PERMITTING;
- (IV) PERFORMANCE BONDING WHERE AN ENTITY OTHER THAN THE LOCAL GOVERNMENT IS PERFORMING THE WORK;
- (V) REPORTING; AND
- (VI) QUALITY OF SERVICE.

**29-27-302. Scope of article.** (1) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AUTHORIZE ANY LOCAL GOVERNMENT TO:

(a) PROVIDE, DIRECTLY OR INDIRECTLY, CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE A FACILITY FOR THE PURPOSE OF PROVIDING, DIRECTLY OR INDIRECTLY, CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO A LOCAL GOVERNMENT PURCHASING, LEASING, CONSTRUCTING, MAINTAINING, OR OPERATING FACILITIES THAT ARE DESIGNED TO PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE THAT THE LOCAL GOVERNMENT USES FOR INTERNAL OR INTERGOVERNMENTAL PURPOSES.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO THE SALE OR LEASE BY A LOCAL GOVERNMENT TO PRIVATE PROVIDERS OF EXCESS CAPACITY, PROVIDED:

(a) SUCH EXCESS CAPACITY IS INSUBSTANTIAL IN RELATION TO THE CAPACITY UTILIZED BY THE LOCAL GOVERNMENT FOR ITS OWN PURPOSES; AND

(b) THE OPPORTUNITY TO PURCHASE AND THE OPPORTUNITY TO USE SUCH EXCESS CAPACITY IS MADE AVAILABLE TO ANY PRIVATE PROVIDER IN

A NONDISCRIMINATORY, NONEXCLUSIVE, AND COMPETITIVELY NEUTRAL MANNER.

(4) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT EITHER THE AUTHORITY OF THE STATEWIDE INTERNET PORTAL AUTHORITY CREATED IN SECTION 24-37.7-102, C.R.S., TO CARRY OUT ITS MISSION OR TO INTEGRATE THE ELECTRONIC INFORMATION DELIVERY SYSTEMS OF LOCAL GOVERNMENTS INTO THE STATEWIDE INTERNET PORTAL AS DEFINED IN ARTICLE 37.7 OF TITLE 24, C.R.S.

**29-27-303. Enforcement and appeal.** (1) BEFORE AN INDIVIDUAL SUBSCRIBER OR A PRIVATE PROVIDER THAT COMPETES WITH A LOCAL GOVERNMENT IN THE GEOGRAPHIC BOUNDARIES OF THE LOCAL GOVERNMENT MAY FILE AN ACTION IN DISTRICT COURT FOR VIOLATION OF THIS ARTICLE, THAT PERSON SHALL FILE A WRITTEN COMPLAINT WITH THE LOCAL GOVERNMENT. THE FAILURE BY THE LOCAL GOVERNMENT TO ISSUE A FINAL DECISION REGARDING THE COMPLAINT WITHIN FORTY-FIVE DAYS SHALL BE TREATED AS AN ADVERSE DECISION FOR PURPOSES OF APPEAL.

(2) AN APPEAL OF AN ADVERSE DECISION FROM THE LOCAL GOVERNMENT MAY BE TAKEN TO THE DISTRICT COURT FOR A DE NOVO PROCEEDING.

**29-27-304. Applicability.** THIS ARTICLE SHALL APPLY TO CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE AND TO THE PURCHASE, LEASE, CONSTRUCTION, MAINTENANCE, OR OPERATION OF ANY FACILITY FOR THE PURPOSE OF PROVIDING SUCH SERVICE, FOR WHICH A LOCAL GOVERNMENT HAS NOT ENTERED INTO AN AGREEMENT OR OTHERWISE TAKEN ANY SUBSTANTIAL ACTION PRIOR TO MARCH 1, 2005, TO PROVIDE SUCH SERVICE OR PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE SUCH FACILITIES.

**SECTION 2. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Joan Fitz-Gerald  
PRESIDENT OF  
THE SENATE

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Andrew Romanoff  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Karen Goldman  
SECRETARY OF  
THE SENATE

---

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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Bill Owens  
GOVERNOR OF THE STATE OF COLORADO

## **RESOLUTION 2019-0**

A RESOLUTION BY THE BOARD OF THE TOWN OF RICO SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF RICO AT THE JUNE 26th, 2019 REGULAR MUNICIPAL ELECTION TO BE HELD A BALLOT QUESTION REGARDING WHETHER THE TOWN MAY RE-ESTABLISH ITS RIGHT TO PROVIDE TELECOMMUNICATIONS SERVICES, ADVANCED SERVICES, AND CABLE TELEVISION SERVICES EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS

WHEREAS, affordable, reliable, and innovative telecommunication services are essential for residents and businesses in today's economic environment and for quality of life; and

WHEREAS, in 2005 the Colorado General Assembly adopted Senate Bill 152, codified at C.R.S. §§ 29-27-101, *et seq.*, which provides that before a local government may provide telecommunications services, advanced services, or cable television services, an election must be held on the question of whether the local government shall provide the services; and

WHEREAS, the effect of Senate Bill 152 has been to restrict the Town's right to improve the Town's connectivity either through the provision of direct services or through partnerships with the public or private sector; and

WHEREAS, the Council finds re-establishing the City's telecommunications rights would allow the Town of Rico community to implement local communication solutions to provide needs based access to benefit the residents and businesses of the Town; and

WHEREAS, the ballot question must be approved by a majority vote before becoming effective.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEE OF THE TOWN OF RICO, COLORADO:

The following ballot question and title shall be submitted to the electors at the November 5th, 2019, regular municipal election to be held:

Without increasing taxes, shall the Town of Rico, Colorado re-establish its right to provide all services restricted since 2005 by Title 29, article 27 of the Colorado Revised Statutes, described as "advanced services", "telecommunications services", and "cable television services", including any new and improved high bandwidth services based on future technologies,

utilizing community owned infrastructure, including, but not limited, to the existing or new fiber optic network, either directly or indirectly, with public or private sector providers, to potential subscribers that may include telecommunications service providers, residential or commercial users within the Town?

YES \_\_\_\_\_

NO \_\_\_\_\_

BE IT FURTHER RESOLVED that the Town Clerk and Town Administrator are hereby authorized and directed to take all necessary and appropriate action with respect to the submission of the above ballot question to the electors and the holding of the regular municipal election to be held on November 5th, 2019.

ADOPTED this 26th day of June, 2019, by the Board of Trustees.

TOWN OF RICO, COLORADO

\_\_\_\_\_  
Zachary McManus, Mayor

Attest:

\_\_\_\_\_  
Linda Yellowman, Town Clerk

### **Expandable Central Sewer Serving the Commercial Core**

Authorization to increase town taxes for the purpose of building a central sewer system to serve the commercial core.

SHALL THE TOWN OF RICO, COLORADO TAXES BE INCREASED NOT MORE THAN \$165,000 ANNUALLY FOR TAX COLLECTION YEAR 2020 (FIRST FULL FISCAL YEAR) AND BY SUCH AMOUNTS AS ARE GENERATED FOR EACH SUBSEQUENT YEAR THEREAFTER FROM AN AD VALOREM PROPERTY TAX INCREASE OF 30.628 MILLS, WHICH IS AN ADDITIONAL \$220.52 PER ONE HUNDRED THOUSAND DOLLARS OF A REAL PROPERTY'S 2020 APPRAISED VALUE (PROVIDED THAT THE TOTAL MILL LEVY MAY BE ADJUSTED TO OFFSET REVENUE LOSSES FROM REFUNDS, ABATEMENTS AND CHANGES TO THE PERCENTAGE OF ACTUAL VALUATION USED TO DETERMINE ASSESSED VALUATION); AND THAT THE ADDITIONAL PROPERTY TAX REVENUE SHALL BE BUDGETED AND APPROPRIATED TO THE TOWN OF RICO'S DEDICATED SEWER FUND FOR THE PUPOSE OF BUILDING AND MAINTAINING A NEW CENTRAL SEWER SYSTEM IN THE TOWN OF RICO'S COMMERCIAL CORE; AND SHALL ALL AMOUNTS RECEIVED BY THE TOWN OF RICO FROM SUCH TAX INCREASE AND OTHER REVENUES AND EARNINGS THEREON BE COLLECTED AND SPENT WITHOUT LIMITATION OR CONDITION AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

### **Re-Activating Silver Creek Water System**

SHALL THE TOWN OF RICO, COLORADO, TAXES BE INCREASED UP TO \$126,008 ANNUALLY FOR TAX COLLECTION YEAR 2020 (FIRST FULL FISCAL YEAR) AND BY SUCH AMOUNTS AS ARE GENERATED FOR EACH SUBSEQUENT YEAR THEREAFTER FROM AN AD VALOREM PROPERTY TAX INCREASE OF 23.39 MILLS, WHICH IS AN ADDITIONAL \$168.41 PER ONE HUNDRED THOUSAND DOLLARS OF A REAL PROPERTY'S 2020 APPRAISED VALUE (PROVIDED THAT THE TOTAL MILL LEVY MAY BE ADJUSTED TO OFFSET REVENUE LOSSES FROM REFUNDS, ABATEMENTS AND CHANGES TO THE PERCENTAGE OF ACTUAL VALUATION USED TO DETERMINE ASSESSED VALUATION); AND THAT THE ADDITIONAL PROPERTY TAX REVENUE SHALL BE BUDGETED AND APPROPRIATED TO THE TOWN OF RICO'S DEDICATED WATER FUND FOR THE PUPOSE OF RE-ACTIVATING THE SILVER CREEK WATER SYSTEM INCLUDING INSTALLING AND MAINTANING A SURFACE WATER TREATMENT FACILITY; AND SHALL ALL AMOUNTS RECEIVED BY THE TOWN OF RICO FROM SUCH TAX INCREASE AND OTHER REVENUES AND EARNINGS THEREON BE COLLECTED AND SPENT WITHOUT LIMITATION OR CONDITION AS A VOTER APPROVED REVENUE CHANGE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

This will be part of the resolution

## Total Town Fiscal Year Spending

### Fiscal Year

2019 \$1,255,505

2018 \$649,618

2017 \$693,919

2016 \$580,486

2015 \$485,697

Overall percentage change from 2015 to 2019 158.50%

Overall dollar charge from 2015 to 2019 \$769,808

## Town Estimate of the Maximum Dollar Amount of the Proposed Tax Increase for the Fiscal Year 2020

(the First Full Year of the proposed Tax Increase)

BALLOT ISSUE No 1A \$165,000

Summary of Written Comments FOR Ballot Issue No. 1A:

Summary of Written Comments AGAINST Ballot Issue 1A: