

Town of Marble
Regular Meeting of the Board of Trustees
May 3 2018
7:00 P.M.
Marble Community Church, 121 W. State St. Marble, Colorado
Agenda

7:00 P.M.

- A. Call to order & roll call of the Regular Meeting of the Board of Trustees
- B. Approve previous minutes
- C. Mayor's Comments
 - a. Appointment of mayor pro tem, Ryan
 - b. Consider approval resolution #3-2018 reappointment of town clerk & town attorney, Ryan
- D. Clerk Report
 - a. Election update, Ron
 - b. Current bills payable 5/3/18, Ron
 - c. Annual Hub Report, Emma
 - d. Colorado History Jail Renovation Project Report, Emma
 - e. Consider approval of Aspen Valley Land Trust Thompson Park MOU, Suzanne
 - f. Consider approval of 2018 Town of Marble business licenses, Ron
- E. Current Land Use Issues
 - a. Discussion of remodel project @ Park St. & West 2nd. St., Ron
- F. Old Business
 - a. Discuss possible meeting with Marble Water Company in June 2018, Ron
 - b. Other
- G. New Business
 - a. Consider approval of 2018 Slow Groovin liquor license, Ron
 - b. Set public hearing to consider approval of up-dated Marble OWTS regulations, Ron
 - c. Consider letter of support & donation to Coal Basin Monument, Dorteia Farris
 - d. Discussion regarding bon fire pile at mill site park, Mike
 - e. Discussion regarding paid parking and booting of vehicles south of fire station, Mike
 - f. Other
- H. Public Comment
 - a. Other
- I. Adjourn

Minutes of the Town of Marble
Special Meeting of the Board of Trustees
April 24 2018

A. Call to order & roll call of the Special Meeting of the Board of Trustees - The meeting was called to order by Judy Morande, Mayor Pro Tem, at 7:04 p.m. Present: Judy Morande, Tim Hunter, Larry Good, Mike Yellico. Also present: Ron Leach, Town Clerk and Terry Langley, minutes.

B. Approve April 5, 2018 minutes – Larry Good made the motion to approve the minutes. Tim Hunter seconded. The motion passed unanimously.

C. Mayor's Comments – Judy Morande read her former oath of office for informational purposes.

D. Clerk Report

a. Certification of April 3 2018 municipal election – Ron reported that the results of the election have been sent to the Colorado Department of Local Affairs, published in the Post Independent and sent to town officials. So the results are certified. The request for a recount was withdrawn.

b. Administer oaths of office to elected mayor and trustees – Ron administered the oath to Ryan Vinciguerra, mayor elect. Next Ron administered the oath to trustees elect Larry Good, Max Gibbons, and Mike Yellico.

c. Certificates of Appreciation to Election Judges – Certificates were presented to Jon Stovall, Terry Langley, Francis Bogle and Karen Davidson. A certificate for Joyce Leeman will be presented to her at a later date. Larry Good thanked Ron for conducting an open and honest election.

d. Other – Ron said that the May 3 meeting will include renewing the agreements for Town Clerk and Town Attorney. He requests a special executive session meeting to discuss his employment evaluation and his employment agreement. Mike Yellico made the motion that they hold a special meeting with an executive session on Monday, April 30 at 7 p.m. Max Gibbons seconded and the motion passed unanimously. Ryan asked that the job description be included in the packet for that meeting.

Amber McMahon thanked the board for serving. She brought cake!!

E. Mayor's Comments – Ryan expressed his appreciation for the board and his optimism for the future.

F. Trustees Comments - Larry Good felt that the election illustrated a desire for the town to move forward. He felt that some people played politics with the election and was disappointed in that. Mike Yellico expressed his optimism for the future and finishing some of the things that have been started. Max Gibbons said that he looked forward to what was coming. Tim said that he hoped everyone was ready to get busy as there is much to be done.

G. Public Comments – Jon Stovall thanked everyone on the board for volunteering to serve the town. He also thanked those trustees going off of the board, as well as everyone who ran. Gary Bascom said that he would like to see the board asking the citizens what their concerns are. Ryan encouraged all citizens to attend meetings to learn what is being worked on.

H. Adjourn - Mike Yellico made a motion to adjourn. Larry Good seconded and the motion passed unanimously. The meeting was adjourned at 7:29 p.m.

Respectfully submitted,

Terry Langley

Town of Marble
Resolution Number 3
Series of 2018

A RESOLUTION APPOINTING TOWN OFFICERS

WHEREAS:

- A. The Town of Marble is a statutory town organized pursuant to Colorado Law; C.R.S. §31-1-101 *et seq.*;
- B. C.R.S. § 31-4-304 states that the board of trustees shall appoint a clerk, treasurer, and town attorney, and that such appointments terminate 30 days after a succeeding board of trustees has been sworn into office;
- C. Ron Leach currently serves as the Town Clerk;
- D. Law of the Rockies currently provides legal services to the Town on a contract basis pursuant to an existing legal services agreement;
- E. The Board desires for Ron Leach to continue serving as Town Clerk, and for Law of the Rockies to continue providing legal services;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF MARBLE, COLORADO THAT:

- 1. Ron Leach is reappointed and shall continue to serve as the Town Clerk pursuant to that certain Contract for Services of Town Clerk between Mr. Leach and the Town dated April 4, 2018, and Ordinance 2017-7, which provides for compensation of \$1,300 per month for the Town Clerk's services.
- 2. Law of the Rockies is appointed as the Town Attorney, and shall continue to provide specifically requested legal services to the Town on a contract basis, pursuant to that certain letter regarding legal services for the Town of Marble, dated April 4, 2018. The Town may terminate this appointment upon notice to Law of the Rockies.

INTRODUCED, READ, AND ADOPTED this ____ day of _____, 2018, by a vote of _____ in favor and _____ opposed.

TOWN OF MARBLE:

Ryan Vinciguerra, Mayor

ATTEST:

Ron Leach, Clerk

TOWN OF MARBLE

CONTRACT FOR SERVICES OF TOWN CLERK

This contract (the "Contract") is entered into as of the date it has been duly executed by all Parties below, between the Town of Marble (the "Town"), a Colorado statutory town whose address is 322 W. Park St., Marble, CO 81623, and Ron Leach ("Leach"), an individual who is a resident of the Town of Marble and whose mailing address is PO Box 1263, Carbondale CO 81623. The Town and Leach may be referred to herein as a Party, or collectively as the Parties.

Recitals

1. The Town is a statutory town organized under the laws of the state of Colorado.
2. The Town, acting through its Board of Trustees (the "Board"), is authorized by statute to appoint a clerk.
3. Leach is willing to serve as the clerk for the Town, on the terms set forth in this Contract.
4. At the meeting of the Board held April 5, 2018, the Board voted to retain Leach as the Clerk.

Agreement

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Contract, the Parties agree as follows:

5. Engagement.

- a. The Town engages Leach as the Clerk to perform the duties described herein, and Leach accepts and agrees to such engagement, subject to the general supervision and pursuant to the orders, advice, and direction of the Town.

6. Duties.

- a. Leach shall perform such duties as are required by the laws of the State of Colorado. To wit, C.R.S. § 31-4-405 provides: "The clerk shall attend all meetings of the board of trustees and make a true and accurate record of all the proceedings, rules, and ordinances made and passed by the board of trustees. Records of the town shall be open to inspection at all reasonable times and under reasonable regulations established by the town as provided by article 72 of title 24, C.R.S."
- b. Leach shall also perform the duties listed on Exhibit A attached hereto, as the same may be amended by Town ordinance pursuant to C.R.S. § 31-4-304.
- c. Leach agrees that he will at all times faithfully, industriously, and to the best of his ability, experience, and talents, perform all of the duties that may be required

of and from him pursuant to the express and implicit terms of this Contract, to the reasonable satisfaction of the Town.

7. Term.

- a. Notwithstanding the date that this Contract is executed by both Parties, this Contract shall have an effective commencement date of April 5, 2018.
- b. Pursuant to C.R.S. § 31-4-304, this Contract shall terminate no later than thirty days after compliance with C.R.S. § 31-4-401 by the members of Board succeeding the current Board.
- c. Pursuant to C.R.S. § 31-4-307, Leach may be removed from office by a majority vote of all members of the Board, provided that no such removal shall be made without a charge in writing and an opportunity of hearing being given unless Leach has moved out of the limits of the Town. If Leach ceases to reside within the limits of the Town, he may be removed from office by a majority vote of all members of the Board.
- d. Leach may terminate this Contract for any reason upon one month's prior written notice to the Town.

8. Compensation.

- a. The Town shall pay Leach, and Leach shall accept from the Town, in full payment for Leach's services under this Contract, compensation in the amount of \$15,600 per year, paid in monthly installments of \$1,300.00.
- b. If the Contract is terminated prior to the last day of a month, Leach shall be entitled to compensation for such month determined by multiplying the monthly installment by a fraction, the numerator of which is the last day of the month that the Contract was still in effect, and the denominator of which is the number of days in the month.
- c. All compensation under this Contract shall be due and payable in arrears on last day of the month for which services were performed.
- d. The Town shall reimburse Leach for all reasonable and necessary expenses incurred by Leach while acting pursuant to the Town's direction.
- e. Expenses which exceed \$250.00 shall require the advance written approval of the Mayor.
- f. In order to obtain reimbursement, Leach shall submit to the Town an itemized statement of such expenses along with copies of bills and receipts. Further explanations may be required of Leach. Payments will be made within 14 days after receipt of all necessary documentation.

- g. The Town shall be responsible for providing the equipment and supplies necessary for Leach to perform the duties described in this Contract, provided that the Town may ask Leach to procure such supplies subject to the reimbursement provisions contained in this Contract.
 - h. The position of Clerk is an exempt position, therefore Leach shall not be entitled to overtime pay. The compensation provided in this Contract for Leach shall constitute full payment for the services of Leach rendered to the Town. However, the Town and Leach agree to use good faith efforts to negotiate additional compensation for extraordinary services, provided that such services and such additional compensation are authorized by the Town in writing prior to their being rendered. Leach waives, discharges, and releases the Town from any claims for such extraordinary services unless the same is authorized in writing in the manner provided herein.
 - i. The Clerk is an employee of the Town. Therefore, the Town shall withhold all payroll taxes as required by law, make all employer contributions related to such payroll taxes as required by law, and shall "secure compensation" for Leach, as that term is used in C.R.S. § 8-44-101(1), in accordance with the Workers' Compensation Act of Colorado.
 - j. Notwithstanding anything herein to the contrary, Leach shall not be entitled to compensation for those times during which he is in material breach of this Contract.
9. Confidentiality. Subject to the requirements of the Colorado Open Records Act and other applicable laws, Leach shall keep all information pertaining to Town business confidential. This obligation shall survive termination of this Contract.
10. Authority. In spite of anything contained in this Contract to the contrary, Leach shall not have the right to make any contracts or commitments for or on behalf of the Town without first obtaining the express written consent of the Mayor.
11. Modification. Any modification of this Contract or additional obligation assumed by either Party in connection with this Contract shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.
12. Validity. The invalidity of any portion of this Contract will not and shall not be deemed to affect the validity of any other provision. If any provision of this Contract is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.
13. Choice of Law. It is the intention of the Parties that this Contract and the performance under this Contract, and all suits and special proceedings under this Contract, be construed in accordance with and under and pursuant to the laws of the State of Colorado, and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Contract, the laws of the State of

14. No waiver. The failure of either Party to insist upon the performance of any of the terms and conditions of this contract, or the waiver of any breach of any of the terms and conditions of this Contract, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
15. Attorney Fees. If any action is filed in relation to this Contract, the unsuccessful Party in the action shall pay to the successful Party, in addition to all the sums that either Party may be called on to pay, a reasonable sum for the successful Party's attorneys' fees.
16. No Assignment / Delegation. Neither Party shall assign its rights and obligations under this Contract without the prior express authorization of the other Party. The duties and covenants of Leach under this Contract, being personal, may not be delegated.

TOWN OF MARBLE

RON LEACH

By: _____ (sign)
Ryan Vinciguerra, Mayor

By: _____ (sign)

Date: _____

Date: _____

Attest: _____ (sign)
 _____ (print)

**Exhibit A:
Town of Marble
Duties of Clerk**

In addition to those duties that may be defined by law, the duties and responsibilities of the Clerk shall include, but not necessarily be limited to, the following:

1. Generally. The Clerk is responsible for organizing and maintaining a wide variety of records; preparing, authenticating, certifying and recording numerous documents; courteously and knowledgeably dealing with the public; supporting all aspects of Board of Trustees meetings; administering elections, liquor licensing, cemetery activity, community building rental and other areas; serving as Municipal Court Clerk and as Planning Commission Secretary, as needed.

2. The Clerk shall:

- a. Prepare and post Board of Trustees meeting agendas; prepare, copy and mail board packets and agendas to Mayor and Trustees.
- b. Take minutes at meetings, transcribe, type and mail them to Mayor and Trustees; maintain official minutes books.
- c. Publish and post all public notices; publish ordinances by title; maintain & update official ordinance book.
- d. Serve as custodian of the Town Seal for authentication and certification; attest, sign and seal all legal documents of the Town; record documents with the County as needed.
- e. Maintain confidential sales tax information and review monthly sales tax reports from Colorado Department of Revenue.
- f. Calculate and certify annually the mil levy for property taxes, per State statute.
- g. Prepare and submit first draft, and any subsequent drafts, of the annual budget for Board review; enter updates following Board reviews; prepare and submit final draft for Board adoption; submit the adopted annual budget and all related documentation to the State by due date.
- h. Initiate, organize, file, safeguard, retrieve and archive a variety of electronic and physical documents, file and record in accordance with state and federal laws that apply to open records, confidentiality and other issues.
- i. Periodically review state-approved Records Retention Schedules and purge records according to applicable law and to Town Resolution(s).
- j. Assign street addresses, maintain and update town-wide system of street addresses.

- k. Maintain and update catalogs, manuals and resource materials.
- l. Perform all administrative functions of liquor licensing.
- m. Retrieve, open and process mail, including date-stamping as needed, circulate to Mayor and Trustees as needed, respond by call, email or letter, match bills to orders and holding for Treasurer, endorse checks and safeguard for Treasurer, fill out surveys, questionnaires and reports, copy and/or file documents, and other processing as needed.
- n. Serve as Election Official, organize and oversee candidate nomination procedures; orient candidates; appoint and train election judges; oversee preparation of ballots; certify ballots; create and/or orders forms, supplies and equipment; notify and educate the public; canvass election returns and prepare certification of results; facilitate the electorate's rights of initiative, referendum and recall; store election documents, ballots and other materials before and after the election, and purge same as prescribed by law.
- o. Administer oaths to public officials in the absence of the Town Attorney.
- p. Prepare and send or deliver Business Licenses when fees have been paid for same.
- q. Perform a variety of personal contact via phone, fax, email and in-person with the public, the Mayor and Trustees, businesses, organizations, governmental agencies and others in a professional, knowledgeable and considerate manner.
- r. Maintain active membership status in various municipal organizations.
- s. Manage and update Town's property and casualty insurance, follow up on claims; independently handle smaller claims on behalf of the Town.
- t. Continually seek to improve job skills through education and training, including certification through the Colorado Municipal Clerks Association as needed.
- u. Compile accounts payable and receivable.
- v. Serve as the Planning Commission Secretary, which can include the following and other duties:
 - i. Prepare and post agendas, send agendas & related documents to Commissioners before meetings.
 - ii. Take minutes at meetings, type & send to Commissioners.
 - iii. Create, update and re-design documents such as building permit applications, variance applications, conditional use permit application packets, and others, as needed.

- w. Serve as Municipal Court Clerk, which can include the following and other duties:
- i. Receive and record all citations served.
 - ii. Begin and maintain case histories and answer questions regarding case status.
 - iii. Schedule Court hearings; notify all parties involved including judge and sheriff's department; subpoena witnesses.
 - iv. Receive pleas from Municipal Court defendants on traffic, parking and ordinance violations.
 - v. Attend Municipal Court and monitor and transcribe Court recordings.
 - vi. Write needed correspondence, schedule any continuances, and prepare default paperwork and warrant issuances as needed.
 - vii. Collect fees, fines and other payments, and make arrangements for fee schedules as needed; issue receipts and safeguard monies and receipt copies to be delivered to Treasurer.
 - viii. Send motor vehicle citation and fine payment information to the Colorado Department of Motor Vehicles Division as soon as citation is paid or fee schedule is set up, within four days of conviction.



LAW OF THE ROCKIES

Members
Marcus J. Lock
Jacob A. With
Kendall K. Burgemeister

Of Counsel
John R. Hill, Jr.

Associate
Austin J. Chambers

525 N. Main Street, Gunnison, CO 81230 | 970.641.1903
lawoftherockies.com | Fax: 970.641.1943 | kburgemeister@lawoftherockies.com

April 4, 2018

VIA ELECTRONIC MAIL

Town of Marble
Attn: Ron Leach, Town Clerk
leach@townofmarble.com

Re: Updated engagement agreement for legal services

Dear Mr. Leach, Mayor Vinciguerra, and Trustees:

Introduction

Law of the Rockies (the "Firm") has enjoyed working with the Town of Marble for the last several years, including providing general legal services for almost six years. In light of the recent election, the Board is required to re-appoint the town attorney. Accordingly, it seemed like an appropriate time to provide an updated engagement agreement between the Town and the Firm. The purpose of this Agreement is to provide you with important information about the scope of this engagement, our fees and billing policies, and other terms that will govern the attorney-client relationship between us.

While the Firm is referred to as the "town attorney," the Firm does not provide in-house general counsel legal services. The Firm provides legal services on a case-by-case basis with respect to matters on which the Town specifically requests the Firm's assistance. After the Firm completes a particular task, it does not assume continuing responsibility to advise the Town on matters affecting the work it has performed unless the Town and the Firm agree in writing that our representation extends to providing continuing advice.

Hourly Rate – Legal Fees

The Firm has always billed the Town for professional services at a discount from our standard hourly billing rates in effect at the time the services are rendered. I have performed the majority of the work for the Town on behalf of the Firm in recent years, and expect to do so in the future. However, from time to time, other attorneys and staff may perform work for the Town in order to provide the Town with the most timely and cost-effective service possible. The rate I

have charged the Town has not changed in the last six years, notwithstanding continuously increasing costs of doing business. My standard hourly rate is \$40 per hour higher now than it was when the Firm began providing general legal services to the Town in 2012. The following table summarizes the Firm's current standard hourly rates, and the rates that will be charged to the Town:

	Standard Rate	Town Rate
Marcus Lock	\$275	\$225
John Hill	\$250	\$215
Jacob With	\$225	\$185
Kendall Burgemeister	\$225	\$185
Austin Chambers	\$175	\$150
Other Attorneys	\$175 or less	\$150
Staff	\$95 or less	\$95 or less

The above discounts are all at a greater percentage than the 10% discount that was previously provided from our standard hourly rates.

The Firm will continue to only charge the Town for 50% of the Town Rate for travel time.

Costs & Expenses

In addition, the Firm charges separately for certain expenses and costs incurred in the representation, as well as for any disbursements to third parties made on your behalf. Examples of such costs and disbursements include the following: court costs, costs of service of process, court reporter fees, travel, support staff overtime (but, as indicated, only when resulting specifically from the demands of your matter), computer-assisted legal research, and postage or other fees of delivering documents to you or third parties. For disbursements to third parties over \$500.00, invoices may be sent to you for direct payment. Similarly, fees and expenses of experts and consultants employed with your consent will be your responsibility, and will be billed directly to you.

Retainer, Payment of Fees, and the Attorney-Client Relationship

The Firm does not require the Town to pay a retainer.

Payment for monthly invoices will be due within thirty (30) days of the date the invoice is rendered. Past due amounts will be shown on the invoice. Interest at the rate of 1.5% per month may be charged for services and costs not paid within thirty (30) days of billing.

The attorney-client relationship is one of mutual trust, confidence, and respect. In order to competently and diligently represent you, the Firm is dependent upon you for factual and other information. Therefore, you agree to be available at all reasonable times to the Firm, and to cooperate and participate in this matter as the Firm may request.

You may terminate our services at any time and for any reason, subject to any applicable requirements for withdrawal of counsel imposed by a tribunal. The Firm reserves the right to withdraw from representation for the failure of a client to make timely payment of fees, costs, and disbursements in accordance with the fee arrangement described in this letter or for any other reason permitted by the applicable rules of professional conduct.

Arbitration of Disputes

If you dispute the fees or costs that we have charged you under this Agreement, and we cannot amicably resolve that dispute, the fee dispute will be decided by the Colorado Bar Association Legal Fee Arbitration Committee. There is no charge for the dispute resolution services provided by the Colorado Bar Association Legal Fee Arbitration Committee.

If a dispute arises regarding any other aspect of the Firm's representation of you, including a claim of legal malpractice, it will be decided under the Federal Arbitration Act by a single arbitrator to be mutually agreed upon by the parties. For this type of dispute, each party will be responsible for paying one-half of all fees and expenses charged by the arbitrator.

Discovery in an arbitration proceeding is typically limited, and an arbitrator's decision can only be appealed on narrow grounds. You should understand that by agreeing to arbitration as the method for dispute resolution, you are relinquishing your right to bring an action in court and to a jury trial. However, this selection of arbitration does not in any way limit the nature or extent of any damages you would be entitled to recover if the Firm fails to act competently in its representation of your interests, and this paragraph shall not operate to limit either party's right to enforce, to the extent necessary, an arbitrator's judgment in a court of law.

File Retention Period

We will return all original documents belonging to you that we have not already returned during the course of the representation within a reasonable time after the conclusion of the representation.

We will keep the contents of your file for a period of three years following the conclusion of the representation ("File Retention Period"), provided however that we shall endeavor to destroy what we deem in our discretion to be superfluous documents, such as draft, duplicate, or excess copies, as soon as is practical. Moreover, the Firm reserves the right to retain the file in an electronic format only. During the File Retention Period, documents and other property in our possession that are related to the representation and reasonably needed to protect your interest will be provided to you within a reasonable time upon your request for such documents, and will be destroyed upon authorization in writing. Upon the expiration of the File Retention Period, you authorize us to destroy any remaining contents of your file, at our discretion, without notice to you, provided however, that we will keep certain financial records described in Colorado Rule of Professional Conduct 1.15 for seven years following the conclusion of the representation.

April 4, 2018
Town of Marble
Page 4 of 4

LAW OF THE ROCKIES

Please contact us if you have any questions or comments about this Agreement. If this Agreement is acceptable to you, please sign below in the space provided and return a fully executed copy of this Agreement to me. We look forward to continuing to work with the Town.

Sincerely,



Kendall K. Burgemeister
LAW OF THE ROCKIES

ACCEPTED AND APPROVED this ____ day of _____, 2018.

Town of Marble

By: _____
Ryan Vinciguerra, Mayor

5:17 PM
04/26/18
Accrual Basis

Town of Marble
Balance Sheet
As of May 3, 2018

	May 3, 18
ASSETS	
Current Assets	
Checking/Savings	
*General Fund -0240	7,359.67
Campground Account	44,425.14
Money Market -1084	141,124.60
Severance/Mineral Proceeds	143,749.49
Water Fees -0873	12,974.96
Total Checking/Savings	349,633.86
Total Current Assets	349,633.86
TOTAL ASSETS	349,633.86
LIABILITIES & EQUITY	0.00

APRIL 2018

TOTAL REVENUE 10,139.13

TOTAL EXPENDITURES 30,322.86

Town of Marble
Deposit Detail-General Fund
 April 2018

Date	Name	Memo	Account	Amount
04/23/2018		Deposit	*General Fund -0240	3,012.60
		Inn at Raspberry Ridge	Business Licenses	-50.00
	Holy Cross Electric	2018 Q1	Holy Cross Electric Rebates	-150.36
	Colorado Stone Quarry CSQ	Deposit	Colorado Stone Maintenance Reim	-300.00
	Colorado Stone Quarry CSQ	Deposit	Colorado Stone Use Agreement	-2,267.31
	Gunnison County	Jan 18	Sales Tax	-244.93
TOTAL				-3,012.60

Town of Marble
Deposit Detail-Money Market Fund
 April 2018

Date	Name	Memo	Account	Amount
04/05/2018		Deposit	Money Market -1084	19.56
		Deposit	Cigarette Tax	-19.56
TOTAL				-19.56
04/09/2018		Deposit	Money Market -1084	1,036.47
		Deposit	Intergovernmental	-1,036.47
TOTAL				-1,036.47
04/10/2018		Deposit	Money Market -1084	2,030.84
	Gunnison County	Deposit	Additional License Tax	-43.00
	Gunnison County	Deposit	Property Tax	-1,921.97
	Gunnison County	Deposit	Specific Ownership Tax	-104.74
	Gunnison County	Deposit	Treasurers Fees	38.87
TOTAL				-2,030.84
04/17/2018		Deposit	Money Market -1084	813.82
		Deposit	Highway Use Tax (HUTF)	-813.82
TOTAL				-813.82

TOTAL 3900.69

Town of Marble
Deposit Detail-Campground Account
April 2018

Date	Name	Memo	Account	Amount
04/02/2018		Deposit	Campground Account	148.38
		Deposit	Campground Rentals	-135.00
		Deposit	Sales Tax	-13.38
TOTAL				-148.38
04/03/2018		Deposit	Campground Account	384.61
		Deposit	Campground Rentals	-350.00
		Deposit	Sales Tax	-34.61
TOTAL				-384.61
04/04/2018		Deposit	Campground Account	653.99
		Deposit	Campground Rentals	-595.00
		Deposit	Sales Tax	-58.99
TOTAL				-653.99
04/05/2018		Deposit	Campground Account	153.88
		Deposit	Campground Rentals	-140.00
		Deposit	Sales Tax	-13.88
TOTAL				-153.88
04/11/2018		Deposit	Campground Account	76.94
		Deposit	Campground Rentals	-70.00
		Deposit	Sales Tax	-6.94
TOTAL				-76.94
04/16/2018		Deposit	Campground Account	258.29
		Deposit	Campground Rentals	-235.00
		Deposit	Sales Tax	-23.29
TOTAL				-258.29
04/18/2018		Deposit	Campground Account	258.29
		Deposit	Campground Rentals	-235.00
		Deposit	Sales Tax	-23.29
TOTAL				-258.29
04/19/2018		Deposit	Campground Account	269.29
		Deposit	Campground Rentals	-245.00
		Deposit	Sales Tax	-24.29
TOTAL				-269.29
04/20/2018		Deposit	Campground Account	241.80
		Deposit	Campground Rentals	225.00
		Deposit	Sales Tax	22.30
		Deposit	Campground Rentals	-445.00

Town of Marble
Deposit Detail-Campground Account
April 2018

<u>Date</u>	<u>Name</u>	<u>Memo</u>	<u>Account</u>	<u>Amount</u>
		Deposit	Sales Tax	-44.10
TOTAL				-241.80
04/23/2018		Deposit	Campground Account	115.41
		Deposit	Campground Rentals	-105.00
		Deposit	Sales Tax	-10.41
TOTAL				-115.41
04/23/2018		Deposit	Campground Account	664.96
		Deposit	Campground Rentals	-605.00
		Deposit	Sales Tax	-59.96
TOTAL				-664.96

TOTAL 3225.84

Town of Marble
Check Register
May 3, 2018

<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Amount</u>
Century Link			
05/03/2018	10277	Utilities	-196.97
05/03/2018	10277	Utilities	-196.96
Total Century Link			-393.93
Gunnison County Assessor			
05/03/2018	10283	Office Expense	-50.00
Total Gunnison County Assessor			-50.00
Hart Intercivic			
05/03/2018	10278	Elections	-171.95
Total Hart Intercivic			-171.95
Holy Cross Electric			
05/03/2018	10275	Utilities	-47.66
05/03/2018	10275	Campground/Office Expenses	-19.88
05/03/2018	10275	Campground/Office Expenses	-19.93
Total Holy Cross Electric			-87.47
Law of the Rockies			
05/03/2018	10274	Legal Expense	-5,988.85
Total Law of the Rockies			-5,988.85
Marble Community Church			
05/03/2018	10280	Rent	-50.00
Total Marble Community Church			-50.00
Marble Water Company			
05/03/2018	10282	Marble Water Co Payment	-20,000.00
05/03/2018	10284	Utilities	-65.00
05/03/2018	10284	Campground/Office Expenses	-65.00
Total Marble Water Company			-20,130.00
Roaring Fork Valley Co-Op			
05/03/2018	10276	Campground/Office Expenses	-435.83
Total Roaring Fork Valley Co-Op			-435.83
Terry Langley			
05/03/2018	10285	Office Expense	-63.75
Total Terry Langley			-63.75
Valley Garbage Solution, LLC			
05/03/2018	10281	Playground & Park Improvements	-110.00
Total Valley Garbage Solution, LLC			-110.00
TOTAL			-27,481.78

Town of Marble
Checks Issued Between Meetings
April 6 through May 2, 2018

<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Amount</u>
Frances Bogle			
04/09/2018	10271	Elections	-210.00
Total Frances Bogle			-210.00
Jon Stovall			
04/09/2018	10273	Elections	-210.00
Total Jon Stovall			-210.00
Joyce Leeman			
04/09/2018	10272	Elections	-210.00
Total Joyce Leeman			-210.00
Mark Chain			
04/09/2018	10269	Elections	-285.00
Total Mark Chain			-285.00
Terry Langley			
04/09/2018	10270	Elections	-210.00
Total Terry Langley			-210.00
TOTAL			-1,125.00

04/26/18

**Town of Marble
Payroll Report
May 2018**

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Type</u>	<u>Amount</u>
Charles R Manus				
05/03/2018	10288	Charles R Manus	Paycheck	-438.66
Total Charles R Manus				-438.66
Jennifer Cutright				
05/03/2018	10286	Jennifer Cutright	Paycheck	-230.87
Total Jennifer Cutright				-230.87
Ronald S Leach				
05/03/2018	10287	Ronald S Leach	Paycheck	-1,046.55
Total Ronald S Leach				-1,046.55
TOTAL				-1,716.08

Town of Marble Budget vs. Actual

January through December 2018

	Jan - Dec 18	Budget	\$ Over Budget	% of Budget
Income				
Intergovernmental				
Additional License Fee	0.00	1,000.00	-1,000.00	0.0%
Cigarette Tax	34.98	0.00	34.98	100.0%
Colo Trust Fund	301.17	0.00	301.17	100.0%
Highway Use Tax (HUTF)	3,405.88	11,000.00	-7,594.12	31.0%
Mineral Lease Proceeds	0.00	6,000.00	-6,000.00	0.0%
Sales Tax	4,103.93	30,000.00	-25,896.07	13.7%
Severance Tax	0.00	10,000.00	-10,000.00	0.0%
Intergovernmental - Other	1,036.47			
Total Intergovernmental	8,882.43	58,000.00	-49,117.57	15.3%
Licenses & Permits				
Building Permits	0.00	3,000.00	-3,000.00	0.0%
Business Licenses	50.00	1,000.00	-950.00	5.0%
Driveway Access Permits	0.00	300.00	-300.00	0.0%
Septic Permits	0.00	1,000.00	-1,000.00	0.0%
Licenses & Permits - Other	0.00	500.00	-500.00	0.0%
Total Licenses & Permits	50.00	5,800.00	-5,750.00	0.9%
Other Revenue				
Campground Rentals	9,305.00	40,500.00	-31,195.00	23.0%
Colorado Stone Maintenance Reim	1,200.00	3,300.00	-2,100.00	36.4%
Colorado Stone Use Agreement	9,069.24	27,208.00	-18,138.76	33.3%
Donations	0.00	500.00	-500.00	0.0%
Holy Cross Electric Rebates	297.36	500.00	-202.64	59.5%
Interest Income	39.40	500.00	-460.60	7.9%
Non-Specified	1,812.08	1,000.00	812.08	181.2%
Pheromone Patches	0.00	3,000.00	-3,000.00	0.0%
Transfers (In) Out	0.00	20,000.00	-20,000.00	0.0%
Total Other Revenue	21,723.08	96,508.00	-74,784.92	22.5%
Taxes				
Additional License Tax	181.50	100.00	81.50	181.5%
Property Tax	9,024.58	20,950.00	-11,925.42	43.1%
Property Tax Interest	0.00	100.00	-100.00	0.0%
Special Use & Sales Tax	0.00	0.00	0.00	0.0%
Specific Ownership Tax	484.98	1,500.00	-1,015.02	32.3%
Total Taxes	9,691.06	22,650.00	-12,958.94	42.8%
Total Income	40,346.57	182,958.00	-142,611.43	22.1%
Gross Profit	40,346.57	182,958.00	-142,611.43	22.1%
Expense				
General Government				
Abated Tax	0.00	0.00	0.00	0.0%
Civic Engagement Fund	1,500.00	5,000.00	-3,500.00	30.0%
Elections	1,883.48	2,000.00	-116.52	94.2%
Marble Fest	250.00	3,000.00	-2,750.00	8.3%
Rent	250.00	600.00	-350.00	41.7%
Salaries				
Enforcement Officer	0.00	5,000.00	-5,000.00	0.0%
Park Employee	2,775.00	6,500.00	-3,725.00	42.7%
Town Clerk	6,500.00	15,600.00	-9,100.00	41.7%
Salaries - Other	1,250.00	6,000.00	-4,750.00	20.8%
Total Salaries	10,525.00	33,100.00	-22,575.00	31.8%
Treasurers Fees	182.23	500.00	-317.77	36.4%
Tree Maintenance Program	0.00	5,000.00	-5,000.00	0.0%
Unclassified	62.73	1,000.00	-937.27	6.3%
Total General Government	14,653.44	50,200.00	-35,546.56	29.2%
General Government - Operating				
Dues & Fees	0.00	300.00	-300.00	0.0%
Legal Publication	86.29	1,000.00	-913.71	8.6%
Marble Water Co 2017 Tap Fee	10,000.00	0.00	10,000.00	100.0%
Marble Water Co Monitoring Well	0.00	0.00	0.00	0.0%
Marble Water Co Payment	20,000.00	20,000.00	0.00	100.0%
Office Expense	2,148.54	3,500.00	-1,351.46	61.4%
Payroll Tax	805.17	2,500.00	-1,694.83	32.2%
Workshop/Travel	375.00	1,000.00	-625.00	37.5%
Total General Government - Operating	33,415.00	28,300.00	5,115.00	118.1%
Other Purchased Services				
Bank Building Maintenance	0.00	0.00	0.00	0.0%
Campground/Office Expenses	6,881.84	10,000.00	-3,118.16	68.8%
Earth Day Expenses	0.00	5,500.00	-5,500.00	0.0%
Grant Writing	0.00	4,000.00	-4,000.00	0.0%
Liability & Worker Comp Insc	2,046.25	4,000.00	-1,953.75	51.2%
Playground & Park Improvements	720.02	1,500.00	-779.98	48.0%
Utilities	1,320.17	1,500.00	-179.83	88.0%
Total Other Purchased Services	10,968.28	26,500.00	-15,531.72	41.4%

	Jan - Dec 18	Budget	\$ Over Budget	% of Budget
Purchased Professional Services				
Accounting and Audit	0.00	10,000.00	-10,000.00	0.0%
Engineering	0.00	8,958.00	-8,958.00	0.0%
Legal Expense	11,852.88	20,000.00	-8,147.12	59.3%
Municipal Court	0.00	5,000.00	-5,000.00	0.0%
Total Purchased Professional Services	11,852.88	43,958.00	-32,105.12	27.0%
Roads				
Snow & Ice Removal	13,884.30	25,000.00	-11,115.70	55.5%
Street Maintenance	0.00	20,000.00	-20,000.00	0.0%
Total Roads	13,884.30	45,000.00	-31,115.70	30.9%
Total Expense	84,773.90	193,958.00	-109,184.10	43.7%
Net Income	-44,427.33	-11,000.00	-33,427.33	403.9%

MARBLE PARK MEMORANDUM OF UNDERSTANDING

THIS MARBLE PARK MEMORANDUM OF UNDERSTANDING (the "MOU") is entered into this ____ day of _____, 2018 (the "Effective Date"), by and between the Town of Marble ("Town") and the Aspen Valley Land Trust, a Colorado nonprofit corporation ("AVLT") (collectively, referred to as the "Parties" and individually, as a "Party").

A. Purpose and Duration. AVLT is under consideration for the donation of the Marble Park, described as Lots F, G, H, I, K, M N, O, P and Q, Block 15, Town of Marble, according to the plat recorded October 2, 1975 at Reception No. 307946, also known as 212 E. Main Street, Marble, CO 81623 ("Property"). During the past several years, the Town has used the Property for its community members to enjoy an in town outdoor space. In exchange for AVLT allowing the Town to use the Property as a public park, the Town agrees to routinely maintain the Property in its current condition including mowing, bathroom maintenance, and trashcan emptying. The Parties have entered into this MOU for the purpose of establishing certain terms, conditions, and obligations regarding the Town's use and maintenance of the Property. This MOU shall remain in effect until jointly amended by the Parties or until execution by the Parties of any subsequent agreement that may be intended to replace the MOU. This MOU does not prohibit the Parties from entering into additional agreements as mutually desired. The Town's use of the property is at the sole discretion of AVLT and may be discontinued if AVLT feels necessary.

B. Property Donation. By executing this MOU, AVLT hereby confirms that it intends to accept the donation of the Property, and that there are no restrictions of title on the Property that would interfere with the Property being maintained and used as a public park. The deed restrictions on the title to the Property state that:

- 1) The Property shall be forever owned by an educational institution, charity, nongovernmental entity or nonprofit entity.
- 2) The Property shall be forever maintained as open space with only low-impact recreational features and improvements permitted, including but not limited to ball fields, swing set and playground, fencing, picnic areas, signs and sign kiosks, and an irrigation pump house. Residential and commercial structures or improvements shall be prohibited on the Property. Permanent roofed structures or buildings are prohibited, except as permitted by this paragraph.
- 3) The Property shall be forever made available to the public for as much of the year as is possible, barring any temporary safety or maintenance closures, and in particular shall be open to and available for use by the local school, which at the time of conveyance is the Marble Charter School.
- 4) The Property shall not be permitted to be developed or used for parking, except around the perimeter, including one row of angle or perpendicular parking on the south side of the Property.

These restrictions shall run with the land and burden and bind all future successor owners of the Property.

The public's use of the Property shall not be prohibited or impaired by the terms of this MOU, except as occasionally and temporarily necessary for property maintenance, safety reasons, hosting of certain events, and other approved purposes.

C. Management Fund. AVL T is in the process of raising \$100,000 for a restricted land management fund, which may be used by AVL T for payment of property taxes and insurance, and routine and special maintenance of the Property. AVL T agrees to repay the Town for all approved hard costs incurred by the Town in maintaining the Property and its improvements, provided there are sufficient funds remaining in the Management Fund for this purpose.

D. Town of Marble Contribution. In exchange for use of the Property as described herein, the Town will be in charge of routine maintenance of the Property, or coordinate with someone to do so, as described below. In addition, the Town may use the Property for special events subject to agreement with AVL T and additional fees as deemed appropriate by AVL T at the time.

E. Maintenance of and Improvements to the Property. The Town shall be responsible for exercising reasonable care in maintaining and repairing the Property for safe use as a public park on a day-to-day basis (not less than monthly in the winter, or weekly in the summer); however, AVL T makes no warranty, express or implied, of any kind or nature concerning the safety, condition, suitability, or use of the Property for the Town. The Town or anyone using the Property with the express or implied consent of the Town shall use the Property at their own risk. In the event that the Town discovers a hazardous condition on the Property, the Town shall notify AVL T immediately and may undertake to repair and remediate the hazardous condition. All non-emergency management activities and hazard mitigation that the Town desires to undertake shall be approved by AVL T prior to taking action. The Town shall otherwise maintain the Property in good condition and repair at its own expense as related to its use thereof, including: periodic mowing of grass as necessary to maintain a neat appearance; removal of all trash, downed tree limbs, and debris; port-a-potty maintenance; dog pot maintenance; and generally maintaining the Property as a safe and welcoming place for the public and community of Marble. The Town shall not permit, commit or allow waste, impairment or deterioration of the Property by its use other than reasonable wear and tear.

The Town shall not be responsible for capital improvements or maintenance of structures installed by AVL T after the date of this MOU unless otherwise agreed, nor for Acts of God nor other substantial damage or changes to the Property caused by forces outside of the Town's control, nor for illegal or improper use of the Property by the public. The Town agrees that any improvements made to the Property by the Town, and the cost and responsibility of maintaining such improvements, shall be the Town's sole responsibility unless otherwise mutually agreed in writing. The Town agrees to seek written approval from AVL T prior to installing or making additional improvements to the Property, which shall be granted at AVL T's sole discretion and only upon consultation with the Marble Charter School to ensure consistency with the terms of the deed restrictions and consistency with the goals and uses of the Marble Charter School. The Town agrees to notify AVL T if it observes damage to the Property, identifies maintenance or

repair needs beyond the scope of the Town's maintenance obligations, or observes improper or illegal use of the Property.

F. Use of Property. The Town shall be allowed to use the Property consistent with its historical practices and the terms of the deed restrictions and this MOU at no charge. The right for the Town to use the Property shall be for as long as AVLT owns the Property or as long as AVLT agrees, subject to the terms and conditions specified herein. Additional use of the Property by the Town shall be at the sole discretion of AVLT, as Property availability and capacity allow.

Should the Property fall into disrepair under the Town's management, or due to Acts of God or illegal or improper use by the public, or should maintenance requirements exceed the Town's or AVLT's capacity to maintain the Property in a safe and welcoming condition, AVLT shall have the right to close the Property to public and Town use until such time as the conditions can be repaired, or to remove any improvements that have fallen into disrepair resulting in unsafe or unsightly conditions.

Approval of improvement requests will be at the sole discretion of AVLT and will be required to adhere to AVLT's approval process. All requests must be submitted in writing and approved by AVLT's Board of Directors.

G. Management by AVLT. AVLT shall maintain payment of taxes and insurance, and provide for maintenance of any improvements provided by AVLT on the Property. AVLT shall not reimburse the Town for routine maintenance costs unless otherwise approved in writing.

H. Indemnification. To the extent permitted by law, the Town shall indemnify and hold AVLT harmless from and against any liability for personal injury or property damage, including, without limitation, all attorney's fees and costs arising out of any acts undertaken under or pursuant to this MOU by the Town or anyone using the Property with the express or implied consent of the Town, including undertaking emergency or non-emergency management, maintenance, construction, or hazard mitigation. The Town does not intend by this provision to waive or limit any rights or defenses against liability available to them pursuant to law, including but not limited to the rights and defenses available pursuant to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.* and Article 11, Section 1 of the Colorado Constitution.

I. Liability Insurance. The Parties shall each maintain liability insurance, with limits recommended by their respective insurance carriers and with additional special event coverage. The Town shall name AVLT as an additional insured for all activities or events undertaken on the Property.

J. Signatures. In witness whereof, the Parties, through their authorized representatives, have executed this MOU on the date set forth above and certify that they have read, understood, and agree to the terms and conditions of this MOU as set forth herein. This MOU may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same.

Signatures on following page

ASPEN VALLEY LAND TRUST

Suzanne Stephens, Executive Director

TOWN OF MARBLE

Name, Title [Need Town Resolution or Authorization]

ATTEST:



HAYES, PHILLIPS, HOFFMANN & CARBERRY, P.C.

1530 Sixteenth Street, Suite 200

Denver, Colorado 80202-1468

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Fairplay, CO 80440

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Ryan S. Malarky

John E. Hayes (Retired)

INDEMNITY CLAUSES IN LOCAL GOVERNMENT CONTRACTS

I. INTRODUCTION:

It is a rare week in municipal law practice that counsel for a city or town is not presented with a contract that includes an indemnification clause. These provisions generally require the local government to indemnify or "hold harmless" the other party to the contract from any liability or costs arising from that party's performance under the contract.¹

There are many good, **practical** reasons for the local government practitioner to counsel his client to reject indemnification language. These include:

- The likelihood that this contractual obligation is not covered by the local government's insurance policy or self-insurance pool coverage.
- The fact that such clauses do not typically expire upon termination of the contract with the result that they are virtually perpetual.
- The inherent inequity of such provisions since they are typically unilateral rather than reciprocal.
- The unpredictability of indemnity obligations since they are open-ended and unlimited in scope and amount.

¹ An indemnity clause is distinguishable from a "release" or "waiver" which limits a contracting parties ability to sue the other contracting party but does not require a defense or indemnification against claims brought by third parties.

- Since indemnity clauses are contractual obligations and not tort claims per se they are probably NOT subject to the liability limits, notice requirements or substantive immunities of the Colorado Governmental Immunity Act. C.R.S. § 24-10-101 *et seq.*

Even putting aside the fact that ANY client is ill-advised to enter into a contractual indemnity clause, however, the almost universal consensus among lawyers who have carefully considered the issues is that local governments in Colorado are legally prohibited from entering into these types of arrangements and that, when and if they do, the contractual indemnification obligation is void and unenforceable *ab initio*.

This is so for several reasons.

II. C.R.S. § 29-1-110.

A. C.R.S. §29-1-110 is part of the Local Government Budget Law of Colorado. It states as follow:

29-1-110. Expenditure not to exceed appropriation. (1) During the fiscal year, no officer, employee, or other spending agency shall expend or contract to expend any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditures of money in excess of the amounts appropriated. Any contract, verbal or written, made in violation of this section shall be void, and no moneys belonging to any local government shall be paid on such contract.

(2) Multiple-year contract may be entered into where allowed by law or if subject to annual appropriation.

B. Knowing violation of this prohibition, as well as the other requirements of the Local Government Budget Law, by any member of the governing body or any local government or any officer, employee, or agent of any spending agency, is malfeasance in office which, upon conviction, shall result in removal from office. C.R.S. §29-1-115. "Any elector [read political opponent or dissident] of the local government may file an affidavit regarding suspected malfeasance with the district attorney, who **shall** investigate the allegations and prosecute the violation if sufficient cause is found. *Id.* (emphasis added). See *e.g. People v. Losavio*, 199 Colo. 212, 606 P.2d 856 (1980).

C. It is, as a practical matter, impossible to appropriate funds in support of a contractual indemnity obligation since the term and amount of the obligation are undetermined.

D. The prohibition of C.R.S. §29-1-110 has frequently resulted in the invalidation of local governmental contracts unsupported by a corresponding appropriation. *See e.g. City of Englewood v. Ripple & Howe, Inc.*, 150 Colo. 434, 374 P.2d 360 (1962); *F.J. Kent Corp. v. Town of Dillon*, 648 P.2d 669 (Colo. App. 1982); *Shannon Water & San. Dist. v. Norris & Sons Drilling Co.*, 29 Colo. App. 48, 477 P.2d 476 (1970). *Cf. Town of Alma v. AZCO Constr. Inc.*, 10 P.3d 1256 (Colo. 2000).

E. C.R.S. §29-1-110 was applied in the recent case of *Thyssenkrupp Safway, Inc. v. Hyland Hills Parks and Recreation Dist.*, 271 P.3d 587 (Colo. 2011) (copy attached) to bar a contractual claim for indemnification.

III. COLORADO CONSTITUTION ARTICLE XI, SECTION 1 AND 2:

A. Section 1 of Article XI of the Colorado Constitution states as follows:

Section 1. Pledging credit of state, county, city, town or school district forbidden. Neither the state, nor any county, city, town, township or school district shall lend or pledge the credit or faith thereof, directly or indirectly, or in any manner to, or in aid of, any person, company or corporation, public or private, for any amount, or for any purpose whatsoever; or become responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the state.

B. An agreement to indemnify another is, by definition, becoming responsible for the liability of a person, company or corporation, public or private, and would seem to be explicitly barred by Art. XI, Sec. 1.

C. While no Colorado case has specifically addressed this issue an article in a recent edition of the Special District Association Newsletter discusses an opinion by the Florida Attorney General concluding that local governments in that state are precluded from entering into indemnity clauses by state constitutional language almost identical to Art. XI, Sec. 1. Erb, "*To the Extent Permitted By Law*," SDA Newsletter, July 2010 (copy attached by permission of the author).

D. May not bar indemnity provisions as between governmental entities.

D. The policies supporting the judicially-created “public purpose” exception to Art. XI, Sec. 1 would not seem to apply to contractual indemnity clauses. CITE.

E. Section 1 of Article XI of the Colorado Constitution states, in pertinent part, as follows:

Section 2. No aid to corporations – no joint ownership by state, county, city, town, or school district. Neither the state, nor any county, city, town, township, or school district shall make any donation or grant to, or in aid of, . . . any person, company, or corporation, public or private

F. Indemnification of another entity is arguably a “grant to, or in aid of” such entity.

IV. TABOR:

A. The so-called Taxpayer Bill of Rights or TABOR requires an election for the “creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever, without adequate present cash reserves pledged irrevocably and held for payments in all future years.” Colo. Const. Art. X, Sec. 20(4).

B. Multi-year fiscal obligations entered into in violation of this election requirement are void and unenforceable.

C. Since indemnity obligations are usually unlimited as to duration and are certainly financial obligations (albeit in an undetermined amount) they most certainly violate TABOR with the result that they are void and unenforceable.

D. The application of TABOR’s prohibition against multiple-year fiscal obligations to an indemnity clause was touched on, but not decided, in *Board of County Comm’rs v. Fixed Base Operators, Inc.*, 939 P.2d 464 (Colo. App. 1997).

V. C.R.S. § 24-91-103.6(1):

A. C.R.S. § 24-91-103.6(1), applicable to construction contracts with public entities, states as follows:

24-91-103.6. Public entity – contracts – change orders – severability. (1) No public entity shall contract with a designer, a contractor, or a designer and contractor for the construction, the design, or both the construction and the design of a public works project unless a full and lawful appropriation when required by statute, charter, ordinance, resolution, or rule or regulation has been made for such project.”

B. Since it is practically impossible to appropriate funds for payment of for the undefined obligation created by an indemnification clause, this statutory language will generally prohibit local governments from including such clauses in construction and/or design contracts.

VI. “TO THE EXTENT ALLOWED BY LAW”:

It is difficult, if not impossible, to craft a principled legal argument in support of the validity and enforceability of indemnity clauses when entered into by local government. Perhaps for this reason, the usual response to any objection to such a clause by the local government practitioner is something along the lines of “well, we get these from every other local government and there lawyers don’t object.”

That’s baloney.

In my experience most local governments DO understand the legal and practical impediments to indemnity obligations and refuse to sign them. Where such provisions are agreed to it is often because the local government’s lawyer never saw the contract.

We practitioners are, however, under considerable pressure from our clients, who generally don’t appreciate or care about the nuances of this issue. They simply know they need the goods or services to be contracted for and want the contract approved.

Thus, the conventional compromise has developed where the indemnification clause is preceded by the qualifying phrase “to the extent allowed by law.” Since the indemnification clause is prohibited under Colorado law, as discussed above, the added phrase nullifies it and renders it meaningless—at least in theory.

While I still employs this device when all else fails, I have become increasingly uncomfortable with it over the years. The prospect of explaining to a judge that my client and I knew that the indemnity obligation was illegal and void, but that we left it in the text anyway but rendered it ineffective by the use of some legal “weasel words” is pretty unappealing.

June 13, 2012

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VII. CONCLUSION:

Local governments are legally prohibited from entering into open-ended indemnification clauses. The local government lawyer should reject these clauses, reciting the authorities set forth in this outline.

Remember—you are not alone!

**Town of Marble 2018
Business Licenses**

Business	First	Last	Address	City	State	Zip
Abstract Marble Company	Gary	Bascom	303 W. Park	Marble	CO	81623
Beaver Lake Lodge and Cabins	Karen and Larry	Good	201 E. Silver	Marble	CO	81623
Beaver Lake Retreat	Vince	Savage	105 E. Marble	Marble	CO	81623
CAP Construction	Charley	Parker	420 W. Silver	Marble	CO	81623
Colorado Stone Quarry	Paul	Bombilicki	1 Marble Quarry Road	Marble	CO	81623
Connie Hendrix Studio	Connie	Hendrix	645 West Main St.	Marble	CO	81623
Crystal River Jeep Tours	Glenn and Patsy	Smith	220 W. Park	Marble	CO	81623
Marble Hideaway	Charley and Carol	Parker	420 W. Silver	Marble	CO	81623
Marble Historical Society	Tom	Williams	412 W. Main	Marble	CO	81623
Marble Hub	Connie	Hendrix	105 W. Main	Marble	CO	81623
Marble Water Company	Kathy	Zentmyer	PO Box 23	Carbondale	CO	81623
Mario's Marble/The Marble Studio	Mario	Villalobos	620 W. Park	Marble	CO	81623
Pifco	Duane	Piffer	0372 Crystal Park Drive	Redstone	CO	81623
Rusby Rentals	Jason	Rusby	112 E. Main Street	Marble	CO	81623
Salon Gallos	Cyndi	Fowler	110 Slate Drive	Marble	CO	81623
Slow Groovin' BBQ	Ryan	Vinciguerra	101 W. First Street	Marble	CO	81623
SUP Marble	Cyndi	Fowler	110 Slate Dr.	Marble	CO	81623
Grateful Builders	Mike	Yellico	8 E. Marble Street	Marble	CO	81623
Bicycle Rental	Richard	Wells	116 E. Main Street	Marble	CO	81623
Inn at Raspberry Ridge	Tom	Akers	5574 Co. Rd. 3	Marble	CO	81623
Marble Ledge B&B	Aaron	Smith	73 Juniper Court	Marble	CO	81623

**RETAIL LIQUOR OR 3.2 BEER
LICENSE RENEWAL APPLICATION**

SLOW GROOVIN BBQ
101 W 1ST STREET
MARBLE CO 81623

Fees Due	
Renewal Fee	500.00
Storage Permit \$200 x _____	_____
Optional Premise \$200 x _____	_____
Related Resort \$75 x _____	_____
Amount Due/Paid	

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

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

Licensee Name SLOW GROOVIN BBQ LLC		DBA SLOW GROOVIN BBQ		
Liquor License # 4703223	License Type Hotel & Restaurant (city)	Sales Tax License # 2559641	Expiration Date 08/04/2018	Due Date 06/20/2018
Operating Manager ryan Vinciguerra	Date of Birth 7/1/83	Home Address 101 W 1st St, Marble CO 81623		
Manager Phone Number 970 963 4070		Email Address ryanvinciguerra@gmail.com		
Street Address 101 W 1ST STREET MARBLE CO 81623				Phone Number 9709634090
Mailing Address 101 W 1ST STREET MARBLE CO 81623				

1. Do you have legal possession of the premises at the street address above? ☒ YES ☐ NO
Is the premises owned or rented? ☒ Owned ☐ Rented* *If rented, expiration date of lease _____
30. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. ☐ YES ☒ NO
- NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS:** If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
3. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. ☐ YES ☒ NO
4. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation.
☐ YES ☒ NO
5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. ☒ YES ☐ NO

I have another restaurant in Snowmass CO

AFFIRMATION & CONSENT

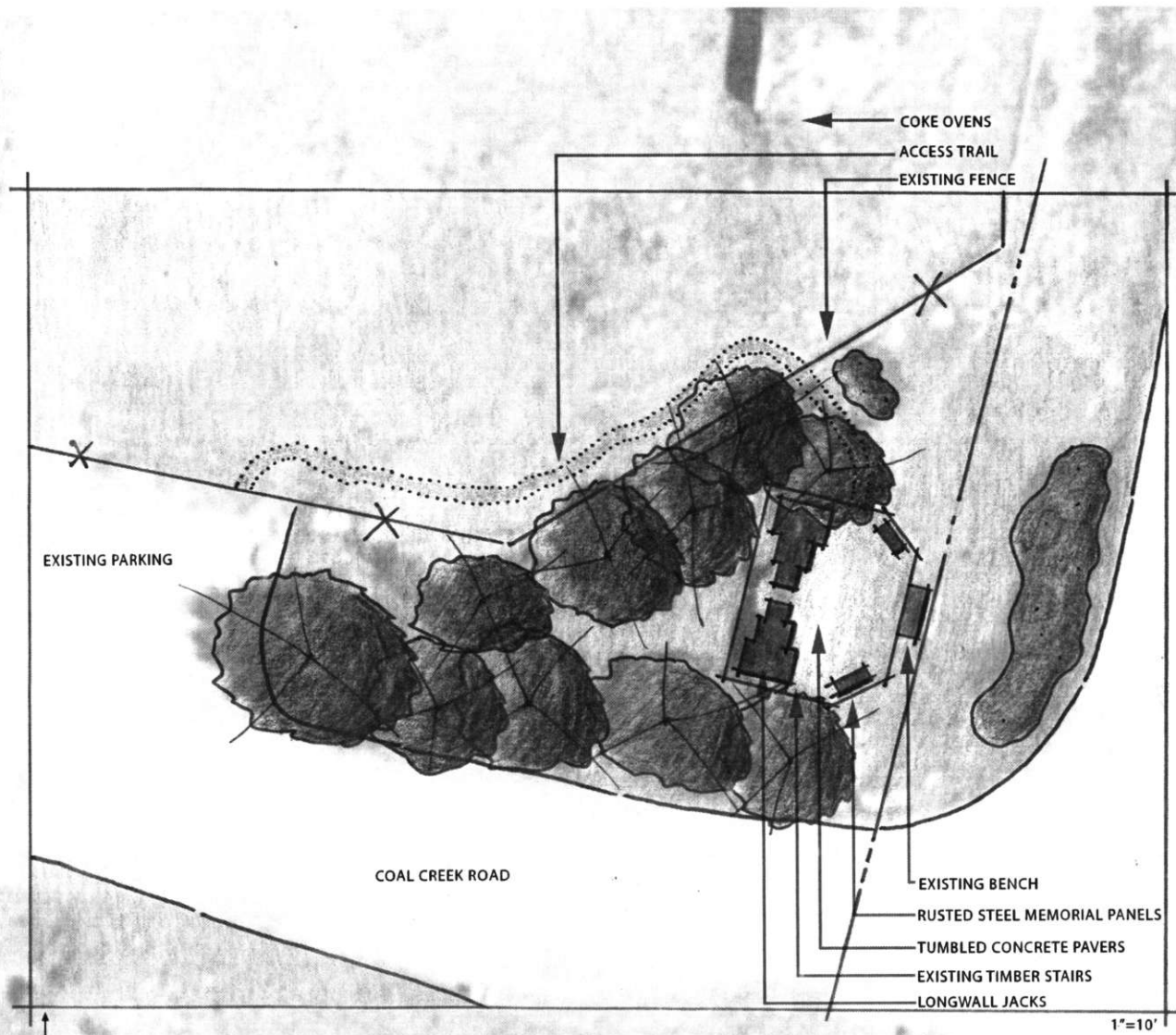
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business Ryan Vinciguerra	Title owner
Signature RV	Date 4/26/18

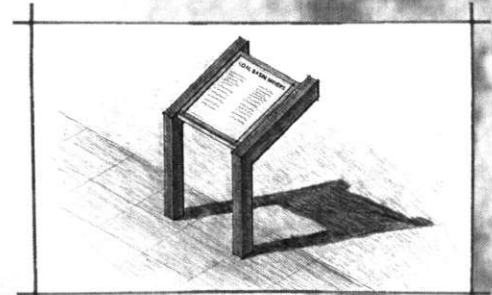
REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

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

Local Licensing Authority For		Date	
Signature	Title	Attest	



REDSTONE

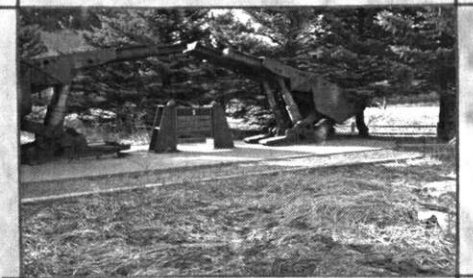


RUSTED STEEL MEMORIAL PANEL

HWY 133



VIEW FROM COAL CREEK ROAD



EXISTING MINER PLAQUE

MARBLE

REDSTONE COAL BASIN MINERS MEMORIAL

CONCEPT STUDY
JULY 2016

Coal Basin Fatalities

(Tentative List)

May 6, 2015

1-19-1960	John Murphy	Hit by shuttle car
1-13 -61	Frank Gilmore, Jr. ^P	Buried in muck-drowned
<u>8-13</u> -63	^{Daniel R.} Danny Farnum	
3-18-64	Richard Borroel ✓ <i>On the way</i>	Rock fall
9-18-64	James LeRoy Ruden	Coal truck accident
12-28-65	Magnus L. Abelin	Explosion killed 9
	James Clyde Amiday	
	Glen J. Anderson	
	Marvin Cahoor	
	George Otis Dunlap	
	Albert Oberster	
	Edward Smith	
	Spencer Snow	
	LeRoy Story	
8-24-66	William Edward Daugherty	Rock fall
8-29-69	George Burton Harris	Bump (outburst of coal)
10-3-69	John H. Kitchens	Bump
1-13-72	Gary Biegler	Shuttle car accident

Tentative Coal Basin Fatalities, page 2

4-24-73	Emory E.Arbaney	Truck Accident
5-23-75	William McCourt, Jr.	Coal outburst killed 2
	Albert Cory	
3-9-76	Robert Adams	Shuttle car accident
11-13-76	William G. Harper	Coal face slide
10-4-77	David J. Atkinson	Bump
1-17-78	Donald J. Shuster	Tractor accident
2-25-81	Mihaly Deak	Rib fall
4-15-81	John Ayala	Explosion killed 15
	Kyle Delano Cook	
	Kelly Bert Green	
	William Eugene Guthrie	
	Richard Allan Lincoln	
	Daniel Bryan Litwiller	
	Terry E. Lucero	
	Loren Herbert Mead	
	Ronald Westley Patch	
	Hugh Pierce Jr.	
	Robert Harold Ragle	
	John Arthur Rhodes	
	Glen William Sharp	

Tentative Coal Basin Fatalities, page 3

4-15-81	Brett James Tucker	Explosion, continued
	Thomas W. Vetter	
12-7-81	John L. Arnold	Truck accident
5-27-82	Mark Edwards	Roof fall
4-13-86	Patrick Joseph Witt	Conveyor belt accident
1-8-87	Lawrence Buford Lusk	Fire
6-8-88	Harry E. Clingan	Longwall accident
1-19-90	John R. Ball	Electrocuted