

EXHIBIT A

**2022 HOWELSEN HILL
ALPINE SLIDE LICENSE AND AGREEMENT**

THIS LICENSE AND AGREEMENT (“Agreement”) is made and entered into as of, October 15, 2020 by and between the CITY OF STEAMBOAT SPRINGS, COLORADO, a municipal corporation organized under the laws of the State of Colorado (the “City”), and COMMUNITY SLIDE, INC., a Colorado corporation (“CSI”).

EXPLANATORY STATEMENT

WHEREAS, CSI is a wholly owned subsidiary of the Steamboat Springs Winter Sports Club, Inc., a Colorado nonprofit corporation; and

WHEREAS, The City has granted Major Development Permit No. RD99-03 (the “Development Permit”) to CSI, and pursuant to the Major Development Permit CSI has constructed an approximately 2,400 linear foot two-track alpine slide (the “Slide”) at Howelsen Hill Park, which is owned by the City; and

WHEREAS, The parties on October 16, 2002 entered into a “Howelsen Hill Alpine Slide Lease and Agreement” (hereafter “2002 Agreement”) to set forth certain of their agreements, rights and obligations with respect to the construction and operation of the Slide and related matters; and

WHEREAS, Since execution of the 2002 Agreement, the City has encountered serious difficulty in maintaining the Barrows Lift in an operational condition due to the scarcity of replacement parts and soils instability in the vicinity of one or more lift towers and the parties have therefore entered into a 2019 Howelsen Hill Alpine Slide License and Agreement (“2019 Agreement”) to address the operation of the Barrows Lift and the City’s performance under the 2002 Agreement; and

WHEREAS, the 2019 Agreement contemplates the replacement of the Barrows Lift and the parties wish to enter into this 2022 Howelsen Hill Alpine Slide License and Agreement (“2022 Agreement”) to implement the intent of the parties relating to the operation of the Slide after the expiration of the 2019 Agreement.

NOW, THEREFORE, in consideration of the foregoing explanatory statement and the mutual covenants and agreements contained herein, the parties agree as follows:

1. CONSTRUCTION OF SLIDE AND REPLACEMENT LIFT. The City acknowledges that CSI has completed the construction of the Slide in accordance with the requirements of the Development Permit and the plans and specifications submitted to the City pursuant to the Development Permit. The parties acknowledge that the City has, with the

financial assistance of CSI or its affiliates, contracted for the construction of a replacement for the Barrows Lift ("Replacement Lift") in the location shown on the attached Exhibit "B".

2. LICENSE. Subject to the terms and conditions of this Agreement, the City authorizes CSI to operate and maintain the Slide at Howelsen Hill Park and licenses to CSI those portions of Howelsen Hill Park as shown on Exhibit "A" ("License Premises") for the purpose of operating and maintaining the Slide and carrying on activities related to Slide operation and maintenance, including the activities referenced in paragraph 4(f). During all periods the Slide is operating CSI shall be entitled to the non-exclusive use, for itself, its customers, employees, contractors and invitees, of the License Premises and the parking areas, rest rooms, playgrounds, picnic areas and other public areas at Howelsen Hill Park. CSI shall also be entitled to reserve other non-exclusive areas at Howelsen Park through the office of the Director of Parks and Recreation Services and Open Space ("Director") in accordance with the established policies for reserving park areas. Notwithstanding that CSI's rights with respect to License Premises are non-exclusive, during all periods the Slide is operating CSI shall be entitled to exclude the general public from Slide track and loading areas to avoid interference with Slide operations.

3. COMPENSATION TO CITY. As compensation to the City for the License pursuant to paragraph 2 and the other rights granted to CSI pursuant to this Agreement, commencing as of the date the Slide is open to the public in the first year of this Agreement and continuing through the term of this Agreement, CSI shall pay to the City an amount equal to the following percentages of CSI's annual Gross Slide Revenue (as hereinafter defined):

10% of Gross Slide Revenue.

For purposes of this Agreement, CSI's annual Gross Slide Revenue shall mean the amounts actually received and retained (i.e. not refunded or subject to refund) by CSI during each calendar year in exchange for granting customers the right to ride the Slide, excluding sales or use taxes, ticket taxes, excise taxes or similar taxes now or hereafter imposed. CSI shall keep full, complete and accurate records of its Gross Slide Revenue on a daily basis, and shall allow the City or its authorized representatives to inspect and copy such records upon reasonable notice. Not later than the 20th day after the end of each calendar month during which the Slide is operated CSI shall provide to the City a statement of its Gross Slide Revenue for the preceding month and all prior months of the current calendar year, and shall pay to the City its share of Gross Slide Revenue received during such month, taking into consideration Gross Slide Revenue for the preceding months of the current calendar year.

The parties intend that the Gross Slide Revenue paid to the City shall be reserved and expended by the City for capital improvements related to the Howelsen Hill Park complex. As part of the City's normal budgetary process related to capital improvements, the City shall call a meeting of a committee of the Executive Director of the Steamboat Springs Winter Sports Club, the Executive Director's designee, the City's Director of Parks and Recreation, and the Director's designee, which committee shall recommend capital improvements to be funded with the City's

share of Gross Slide Revenue. The appropriation of such funds shall be subject to the City Council's discretion as provided in Section 6(b) of this Agreement.

Notwithstanding anything to the contrary in this Agreement, CSI shall be entitled to designate one (1) day during each calendar year as a benefit day for the Steamboat Springs Winter Sports Club (or its successor) Scholarship Fund, and all Gross Slide Revenue received for such day shall be donated to the Steamboat Springs Winter Sports Club Scholarship Fund. The benefit day shall be selected by mutual agreement of the Steamboat Springs Winter Sports Club and the City. Gross Slide Revenue from such benefit day shall be excluded in determining the compensation payable to the City pursuant to this paragraph. Further, nothing in this Agreement shall restrict CSI from granting reasonable complimentary use of the Slide or from sponsoring promotional events or benefits for the City and others which include complimentary Slide use, provided that the annual level of complimentary use shall be subject to the City's approval and further provided that full-time Slide employees and full-time Steamboat Springs Winter Sports Club employees may be issued slide passes at no charge.

In addition to the City's share of Gross Slide Revenue, commencing in the first year of the term of this Agreement CSI shall pay to the City a share pro-rated according to CSI's use of the chair lift per each calendar year the Slide is operated for a full season, to reimburse the City for wear and tear and maintenance costs on the chair lift used for slide operations. CSI shall pay for any direct damage to the chair lift fully attributable to CSI activities. If the Slide is operated for less than a full season during any calendar year, such payment shall be prorated based on the portion of the season the Slide was operated. Such payment shall be made to the City on or before October 15th of each year of the term of this Agreement.

4. CERTAIN OPERATIONAL MATTERS. Without limiting other provisions of this Agreement, the Slide shall be operated by the parties in accordance with the following:

(a) **INSURANCE.** During any period CSI is operating at Howelsen Hill Park CSI shall maintain general liability insurance with respect to its activities in an amount not less than \$1,000,000 per person and \$2,000,000 per occurrence. CSI shall increase these policy limits in proportion to any increase in the Colorado Governmental Immunity Act liability limits set forth in C.R.S. 24-10-114. CSI shall also maintain property insurance covering the Slide in an amount equal to the reasonably anticipated replacement cost of the Slide, provided that if such insurance is not generally available for a reasonable cost CSI shall maintain such lesser property insurance as is generally carried on similar structures. CSI may provide property insurance by adding the Slide to coverage under the City's general property insurance applicable at Howelsen Hill Park, provided that CSI shall pay any incremental insurance costs resulting from such addition. The City shall be named as an additional insured on all liability and property insurance policies issued to CSI with respect to the Slide, and CSI shall be named as an additional insured if the Slide is covered by the City's property insurance policy. CSI shall be obligated to repair and replace the Slide after damage or destruction unless this Agreement is terminated as provided in paragraph 11(b). In the event of damage or destruction to the Slide, unless this Agreement is

terminated as provided in paragraph 11(b) the proceeds of property insurance (whether payable to the City or CSI) shall be applied to the repair and/or replacement of the Slide. Any insurance proceeds not utilized to repair or replace the Slide shall be payable to CSI. CSI shall also maintain workers' compensation insurance as required by law and such further insurance as is generally carried by prudent businesses engaged in similar activities.

(b) **EXCLUSIVITY.** During the term of this Agreement, the City will not authorize any third party to operate an alpine slide or similar apparatus on property owned or controlled by the City. During the term of this Agreement, CSI shall not operate an alpine slide, or participate financially in any way with an alpine slide, within 65 miles of the municipal boundaries of the City.

(c) **CAPACITY/CITY USES.** CSI acknowledges that the City may elect to use the Replacement Lift to provide uphill travel for mountain biking or other uses of Howelsen Hill Park. However, the City shall reserve capacity on the Replacement Lift for CSI's Slide customers on an hourly basis that is at least equal to the uphill capacity of the Barrows Lift, which the parties agree is six hundred and seven persons per hour (607 pph).

5. SPONSORSHIP OPPORTUNITIES AND INTELLECTUAL PROPERTY. CSI shall be the owner of all trademarks, logos, trade names and other proprietary rights associated with the Slide. CSI shall be entitled to license or otherwise deal with such items, and fifty percent (50%) of the net after tax proceeds, after deduction of all direct and indirect costs and expenses associated therewith shall be paid to the City.

6. CHAIRLIFT OPERATIONS.

(a) CSI is authorized to use the Replacement Lift (or any replacement chairlift in approximately the same location) on a non-exclusive basis in connection with Slide operations and other activities permitted pursuant to this Agreement. The City shall maintain the chairlift in an operational and safe condition, in accordance with the requirements of the Colorado Tramway Safety Board ("Safety Board") and other applicable laws and regulations. CSI shall reimburse to the City a share of its actual cost, pro-rated according to CSI's use of the chair lift, as determined by the City and demonstrative to CSI, or routine maintenance performed on the lift during periods of Slide operations and which are required as a result of Slide operations. The City shall, at its expense, perform all necessary major repairs and replacements of the lift, except that CSI shall pay all costs, including labor, material, and inspection costs, if any, to install modifications on lift chairs necessary to accommodate its operators or required by the Safety Board solely because the lift is to be used by Slide customers. Throughout the term of this Agreement, the City shall locate a chairlift at Howelsen Hill Park that provides uplift capacity for Slide operations at least as good as the Barrows chairlift, which chairlift shall commence and terminate (of have an exit

point) in the general location of the current Barrows chairlift. The City shall not be obligated to provide such uplift capacity during reasonable periods the lift is out of service for repairs or maintenance or due to factors beyond the City's reasonable control, such as catastrophic failure or interruption in utility service, provided the City shall take reasonable efforts to restore service as quickly as possible.

- (b) The parties do not intend to create a multiple-fiscal year, direct or indirect, debt or other financial obligation of the City as defined in Article X, Section 20 of the Colorado Constitution. Therefore, the parties acknowledge that all financial obligations of the City under this agreement including, without limitation, the City's obligation to commit funds to certain capital improvements pursuant to paragraph 3 and to provide uplift capacity pursuant to paragraph 6(a), are subject to the annual appropriation by the City Council, pursuant to the annual budget process, of funds sufficient to meet such obligations. If the annual budgetary appropriation is not made, CSI may terminate this Agreement as of the last date for which funds have been appropriated pursuant to the provisions of paragraph 11(b), without further payment or penalty on the part of the City.

7. STORAGE FACILITIES. The parties recognize that CSI requires storage for the operation of the slide, and will work to find mutually agreeable storage solutions.

8. RECLAMATION.

(a) Unless the City purchases the Slide pursuant to paragraph 9, upon termination of this Agreement CSI shall be obligated to remove the Slide from Howelsen Hill Park and restore the surface of the ground disturbed as a result of the installation and removal of the Slide, provided that CSI may bury and shall not be obligated to remove permanent retaining walls. Reclamation activities shall be commenced and completed as promptly as reasonably practical consistent with weather conditions and the availability of labor and equipment. Disturbed areas shall be replanted with native grasses consistent with those growing on adjacent areas of Howelsen Hill. CSI shall be required to reclaim only those areas impacted by construction of the Slide using best practices. CSI shall restore the surface to a natural looking contour similar to the contour existing at the time of removal of the Slide.

(b) The parties acknowledge that the current estimated cost of the reclamation work required to paragraph 8(a) is \$235,000, based on the estimate of Native Excavating. Commencing in 2023 and every fifth (5th) year thereafter during the term of this Agreement, or more often as CSI shall determine, CSI shall, at its expense, obtain and deliver to the City an updated estimate of the cost of the reclamation work required pursuant to paragraph 8(a). Within sixty (60) days after the City's receipt of any such updated estimate, the City shall notify CSI that it either disapproves the estimate as submitted or approves the estimate with specified modifications. If CSI disagrees with any estimate modifications specified by the City, the parties

agree to negotiate in good faith to resolve the disagreement, provided that the City shall retain ultimate authority to approve the estimated cost of the reclamation work required pursuant to paragraph 8(a). For purposes of this paragraph, the "approved estimate" is the estimate of such reclamation cost that has been most recently approved by the City.

(c) CSI shall secure its obligation to complete the reclamation work required pursuant to paragraph 8(a) by either or both of the following, as determined by CSI:

(i) CSI may establish in its name one or more separate accounts at one or more insured financial institutions doing business in Steamboat Springs, Colorado and deposit funds in such account(s), which shall be held separate and apart from all other funds of CSI and reserved for payment of the costs of CSI's reclamation obligation; and/or

ii) CSI may provide the City with one or more letters of credit or similar obligations issued by one or more financial institutions doing business in Steamboat Springs, Colorado. Such letters of credit or similar obligations shall be in forms reasonably acceptable to the City and shall secure completion of CSI's reclamation obligation.

The amounts held in any accounts referenced in (i) above and the amounts of any letters of credit or similar security referred to in (ii) above, in the aggregate, constitute the reclamation security.

9. TERM AND EXTENSION. The term of this Agreement shall commence as of the expiration of the 2019 Howelsen Hill Alpine Slide Agreement and continue thereafter until October 31, 2027 unless sooner terminated as provided herein. CSI may renew the term of this Agreement for a successive period of five (5) years by giving written notice of renewal to the City at least one hundred and eighty (180) days prior to the expiration of term on October 31, 2027. The City may elect not to renew this Agreement by giving CSI written notice that this Agreement shall not be renewed within thirty (30) days of receipt of CSI's notice of intent to renew.

Termination of this Agreement shall not waive, release or otherwise affect the rights of obligation of the parties that contemplate performance after termination. Upon termination of this Agreement for any reason, the City shall either (i) pay CSI the fair market value of all Slide improvements and equipment then in existence as agreed to by the parties, in which case the Slide shall, upon receipt of such payment, convey all such Slide improvements and equipment to the City in "AS IS" and "WHERE IS" condition, or (ii) allow CSI a reasonable period to remove all Slide improvements and equipment and dispose of such items for its own account.

10. DEFAULT. No party shall be in default hereunder unless both (i) the party fails to perform an obligation under this Agreement within thirty (30) days after receipt of notice from the other party specifying the obligation to be performed, provided that if such obligation cannot reasonably be performed within thirty (30) days, the party obligated to perform shall not be in

default it if commences performance within such 30-day period and completes performance as soon as reasonably practicable thereafter, and (ii) the parties have failed to agree upon a cure for such default within thirty (30) days after the expiration of the 30-day period referenced in (i) above. The parties agree to negotiate in good faith a reasonable cure for the default during the 30-day period referenced in clause (ii) of the preceding sentence. In addition, no party shall be in default for failing to perform an obligation hereunder if such failure to perform is due to uncontrollable forces. "Uncontrollable forces" shall mean any cause beyond the control of the party obligated to perform, including but not limited to winter weather, labor disputes, labor or material shortages, restraint by court order or public authority, utility company delays or delays in obtaining necessary authorizations or approvals from governmental authorities. In the event uncontrollable forces prevent the performance of an obligation, the applicable time for performance shall be extended for a reasonable time following the end of the uncontrollable force.

11. EARLY TERMINATION.

(a) **BY THE CITY.** If CSI fails to perform any material obligation to be performed by it pursuant to this Agreement after the notice, opportunity to cure and the good faith negotiations provided for in paragraph 10, then as long as the condition of default continues, the City may terminate this Agreement by notice to CSI.

(b) **BY CSI.** If the City fails to perform any material obligation to be performed by it pursuant to this Agreement after the notice, opportunity to cure and the good faith negotiations provided for in paragraph 10, then as long as the condition of default continues, CSI may terminate this Agreement by notice to the City. In addition, if CSI determines that its operation of the Slide is no longer feasible, it may terminate this Agreement by notice to the City.

If notice of termination is given pursuant to subparagraph (a) or subparagraph (b) above, this Agreement shall continue until completion of the reclamation contemplated by paragraph 8. Termination of this Agreement shall be without prejudice to the other rights and remedies of the parties.

12. ASSIGNMENT, TRANSFER. The rights and obligations of CSI hereunder shall not be assignable or otherwise transferable except to the Steamboat Springs Winter Sports Club or its "permitted successors," as hereinafter defined. Further, if the Steamboat Springs Winter Sports Club or its permitted successors cease to own 100% of the outstanding voting common stock of CSI, such cessation shall be an assignment or transfer in violation of this paragraph and shall be cause for default under this Agreement. For purposes of this paragraph, the "permitted successors" of the Steamboat Springs Winter Sports Club shall be any entity controlled by the Steamboat Springs Winter Sports Club or any entity that succeeds to substantially all of the assets and programs of the Steamboat Springs Winter Sports Club.

13. NON-DISCRIMINATION. In constructing the Slide or other improvements or facilities as Howelsen Hill Park, or in operating the Slide or engaging in the other activities at Howelsen Hill Park authorized by this Agreement, no person shall be excluded from participation, denied benefits, or otherwise be subject to discrimination on the grounds of race, color, physical or mental disability or national origin, provided that CSI may establish and enforce reasonable rules for health and safety purposes.

14. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND INDEMNIFICATION. CSI shall comply with the applicable provisions of the Americans with Disabilities Act of 1990 ("ADA") as in effect from time to time. CSI shall provide the City with a written certificate of compliance with the ADA prior to opening to the public in 2002. To the fullest extent permitted by law CSI agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, or the requirement for any remedial work, which result from the operation of the Slide, operations of the chairlift for Slide purposes or CSI activities at Howelsen Hill Park, including any claims made against the City under the ADA, if such injury, loss, or damage is caused by, or claimed to be caused by, the act, omission, or other fault of CSI, any subcontractor of CSI, or any officer, employee, or agent of CSI or any subcontractor, or any other person for whom CSI is responsible. CSI shall investigate and defend against any such liability, claims, and demands, and shall bear all costs and expenses related thereto, including court costs and attorney fees. CSI's obligations pursuant to this paragraph shall not be applicable to any liability, claims, demands, injury, loss or damage which results from the act, omission, or other fault of the City or its employees, agents, contractors or invitees or any other person for whom the City is responsible.

15. REQUIREMENT FOR WAIVERS OF LIABILITY. CSI shall utilize liability reLicenses in a form generally considered acceptable by alpine slide operators.

16. NON-WAIVER. Failure or delay on the part of either party to complain of any action or non-action on the part of the other shall not be deemed to be a waiver of their respective rights hereunder. The consent or approval by either party to or of any action by the other requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar action. All waivers must be in writing and signed by the party against whom such waiver is sought to be enforced. No waiver shall be a continuing waiver unless so stated in the instrument of waiver.

17. NOTICES. Any notice or other communication required or permitted pursuant to this Agreement shall be in writing and shall be directed to the City or CSI at their respective addresses set forth below or at such other address as may be subsequently specified by notice to the other party. Notices shall be effective upon the earlier of actual receipt or three (3) business days after being deposited in the United States mail, certified, return receipt requested, and addressed to the party to receive such notice as follows:

To the City:

City of Steamboat Springs
Attn: City Manager
P.O. Box 775088
Steamboat Springs, CO 80477

To CSI:

Community Slide, Inc.
Attn: President
P.O. Box 774487
Steamboat Springs, CO 80477

18. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.

19. INVALID PROVISIONS. Any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20. ESTOPPEL CERTIFICATE. At any time and from time to time either party shall execute, acknowledge and deliver to the other a written statement certifying that this Agreement is in effect without modification of the provisions hereof (or if there have been modifications, a statement thereof), and that neither party is in default hereunder (or if any such default exists, a description thereof). Any such certificate shall be delivered within ten (10) days after request is made therefor.

21. EFFECT OF AMENDMENT; WAIVER. The parties intend that this 2022 Agreement shall supersede and replace the 2002 and 2019 Agreements in their entirety. The 2002 and 2019 Agreements shall terminate and be of no further force and effect. The parties waive any and all claims arising out of the 2002 and 2019 Agreements.

22. MISCELLANEOUS. In this Agreement, the singular shall include the plural; the singular in reference to one gender shall include the other and the neuter, as appropriate. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action concerning this Agreement may be brought in Routt County, Colorado. This Agreement may not be modified or amended except by an instrument in writing signed by each of the parties hereto. This Agreement shall not be interpreted for or against any party based on participation in

drafting or similar rules of construction. Each party shall have all remedies at law and in equity for the breach of any promise, covenant or obligation contained in this Agreement. The party substantially prevailing in any action to interpret or enforce this Agreement shall be awarded its costs of the action and reasonable attorney's fees. Each of the parties agrees to execute and deliver such further documents and to take such further actions as may be reasonably requested by the other party to carry out the provisions of this Agreement. This Agreement may be executed in any number of counterparts and may be transmitted by facsimile copier or similar means. The signature of a party on a facsimile copy shall be binding as an original. The exhibits attached hereto are incorporated by reference.

IN WITNESS WHEREOF, the parties have entered into this Agreement as on the day and year first above written.

CITY OF STEAMBOAT SPRINGS, COLORADO

By 
Gary Suiter, City Manager

ATTEST:


Julie Franklin, CMC
City Clerk



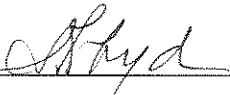
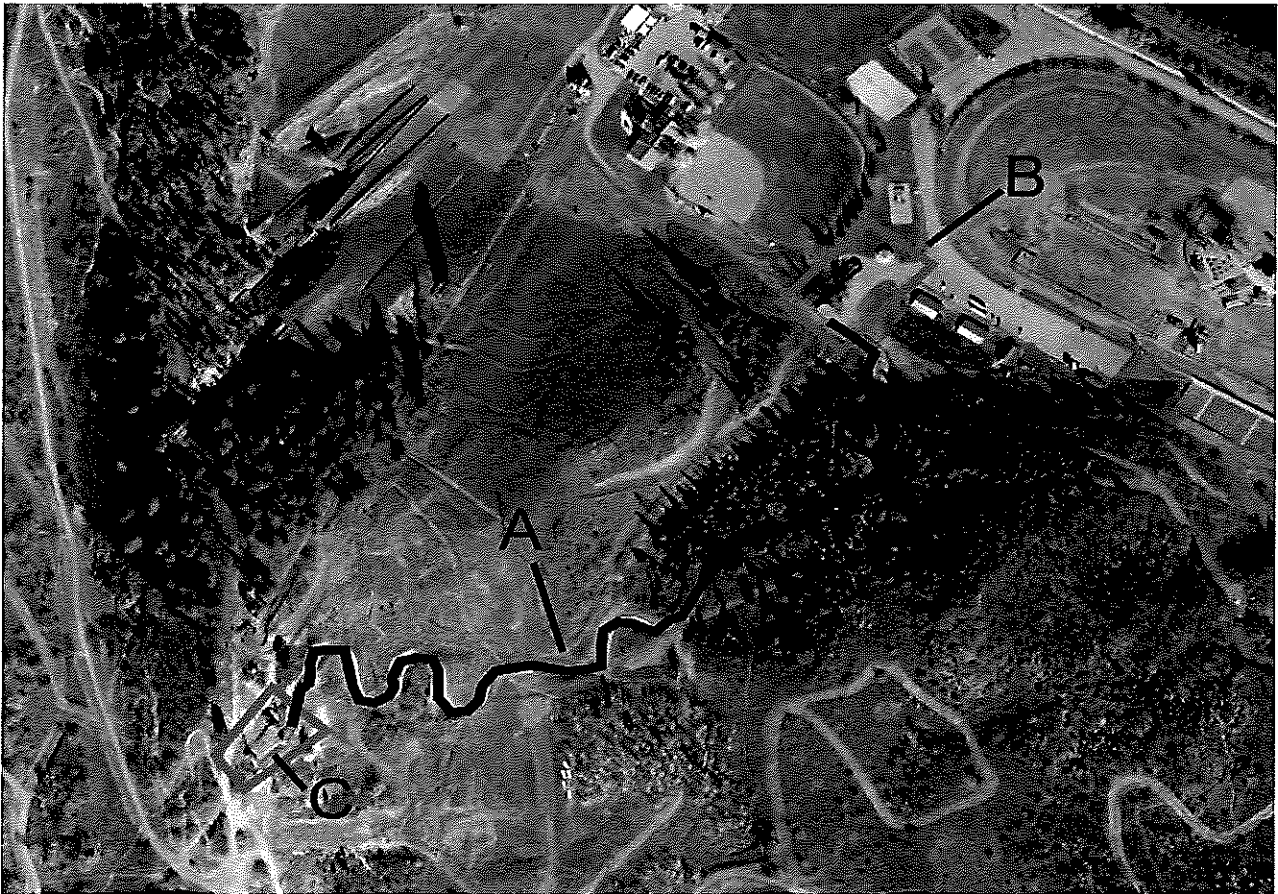
By 
, President

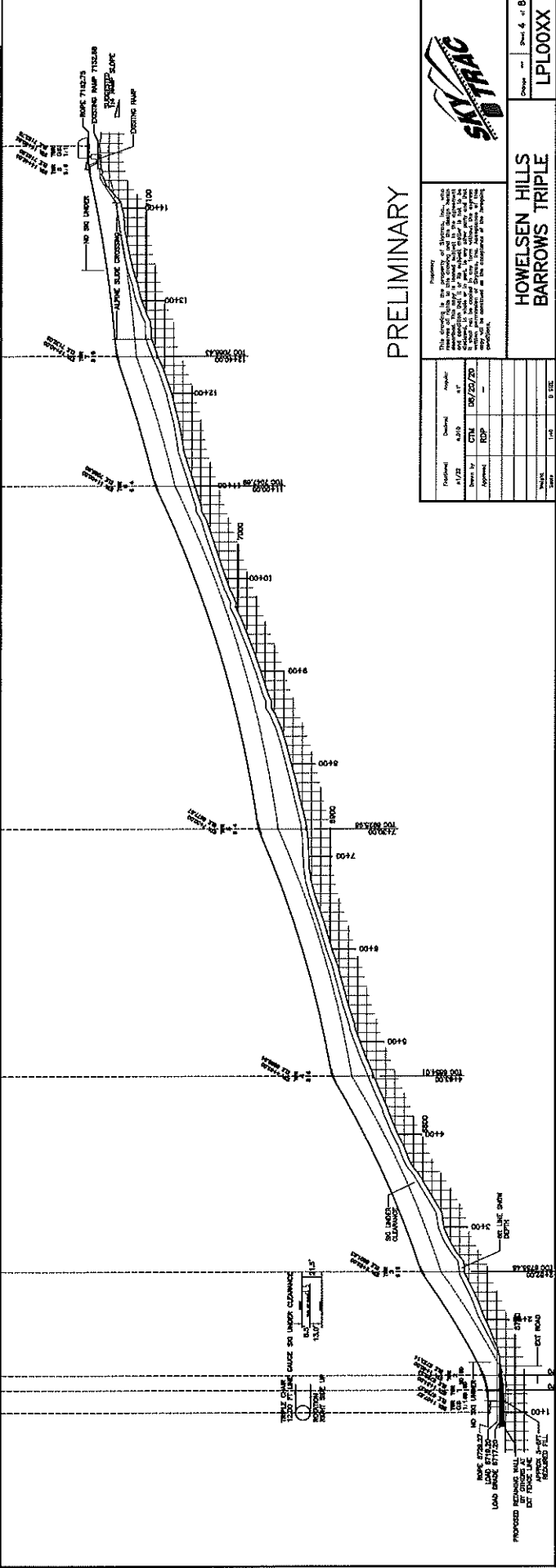
Exhibit A

Howelsen Hill Alpine Slide


Areas A,B,C

The City of Steamboat Springs understands that in order for the Steamboat Springs Winter Sports Club to operate the Alpine Slide that the Steamboat Springs Winter Sports Club needs access to the slide area, ticketing facilities, concessions facilities, and storage facilities. The map below illustrates the general location of these permitted uses. It is understood that the removal of any of the current structures that support the Alpine Slide for the installation of the new Barrows Chairlift will be replaced through the new lift installation project and budget, subject to the terms of the Grant Agreement executed by the parties. Use of any additional locations or facilities will need to be mutually agreed upon by the City of Steamboat Springs and the Steamboat Springs Winter Sports Club.





PRELIMINARY



Howelsen Hills
 Barrows Triple

Project: _____
 Station: _____
 Date: _____

Scale: 1" = 100'

