

ATTACHMENT 1

BROWN RANCH ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2023, by and between the CITY OF STEAMBOAT SPRINGS, a Colorado municipal corporation ("City") and the Yampa Valley Housing Authority, a multi-jurisdictional housing authority ("YVHA").

WHEREAS, YVHA owns the real property described in Exhibit A ("Brown Ranch"), which consists of approximately 420 acres; and

WHEREAS, Brown Ranch is contiguous with the city limits and within the Urban Growth Boundary; and

WHEREAS, YVHA filed a Petition for Annexation with the City on October 18, 2022, to annex Brown Ranch into city limits; and

WHEREAS, the City has determined that it would be in the best interest of the public health, safety, and welfare of its citizens to impose certain terms and conditions on YVHA in connection with the annexation of Brown to the City;

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. As used in this Agreement, unless the context clearly requires otherwise:

"Annexation Ordinance" shall mean the ordinance adopted by the City Council of the City of Steamboat Springs pursuant to the Municipal Annexation Act of 1965 (Section 31-12- 101, et seq., C.R.S.) officially annexing the Property into the City of Steamboat Springs.

"Applicable City Ordinances" shall mean all ordinances of the City which regulate the development, subdivision and use of the Property, as in effect from time to time.

"Regulating Plan" shall mean document which establishes density, uses, patterns, open space and parks, and primary streets and their general locations within the Property, to be approved by the City pursuant to the requirements and procedures set forth in the TND Standards in effect as of the date this annexation becomes effective.

"YVHA" shall mean the Yampa Valley Housing Authority, ~~and~~

"YVHA Affiliate" shall mean any entity owned in whole or part by the Yampa Valley Housing Authority, ~~and~~ any District of Master Homeowners Association formed by the Yampa Valley Housing Authority, and any entity that is an owner of any part of the Brown Ranch and is engaged in a joint venture with YVHA to develop housing pursuant to this agreement.

Commented [DF1]: Planning Department will be proposing amendments to the TND provisions. This definition may need to change if and when these amendments are adopted.

[TO SUPPLEMENT AS NEEDED]

2. GENERAL PLAN OF DEVELOPMENT

a. Unit Types & Numbers

YVHA may develop up to 2,264 residential units at Brown Ranch through full build-out. YVHA may develop up to 419,000 square feet of non-residential uses at Brown Ranch.

Brown Ranch shall generally consist of four neighborhoods, currently identified by letter. Neighborhood A shall consist of 400 to 480 Units. Neighborhood B shall consist of 330 to 360 Units. Neighborhood C shall consist of 1030 to 1070 Units. Neighborhood D shall consist of 480 to 510 Units.

The contemplated unit composition at full build-out will consist of 1,486 multi-family units (65.5% of total units), 484 single-family attached units (21.5% of total units), and 294 single-family detached units (13% of total units).

	PROGRAM		# OF UNITS BY NBH				TOTAL PER TYPE
			NBH A	NBH B	NBH C	NBH D	
RESIDENTIAL	Multi-family	Rental	319	109	418	138	1486
		Condo	96	36	156	110	
		ADU	0	10	52	42	
		Sub-Total	415	155	626	290	
	Single Family Attached	Rental	8	50	143	43	484
		Owner	6	40	117	77	
		Sub-Total	14	90	260	120	
	Single Family Detached	Rental	0	11	18	8	294
		Owner	0	73	122	62	
		Sub-Total	0	84	140	70	
Total by NBH		429	329	1026	480	2264	

	PROGRAM		Area in Square Feet				TOTAL PER TYPE
			NBH A	NBH B	NBH C	NBH D	
COMMERCIAL/COMMUNITY	Grocery	Mixed Use	15,000	-	-	-	15,000
	Retail Space (coffee, restaurant, etc.)	Mixed Use	16,000	16,000	32,500	31,500	96,000
	Office Space/ Non-Profit Center	Mixed Use	3,333	3,333	9,334	12,000	28,000
	Childcare accepting CCAP	Mixed Use	2,500	2500	2,500	2,500	10,000
	Fire Station Site Area (3 FT Staff)	Free Standing	50000	-	-	-	50,000
	K-8 School Site Area (590 people)	Free Standing	-	-	200,000	-	200,000
	Indoor Field House	TBD	-	-	10,000	10,000	20,000
	Total by NBH		86,833	21,833	254,334	56,000	419,000

Commented [DF2]: Revise Fire Station site area and delete staffing reference.

The unit numbers and composition outlined above are based upon current assumptions about housing need, community preferences, and available subsidies. It is YVHA's intention the unit numbers, composition, and size of non-residential uses will be updated over time to account for changes in local housing need. Based upon the same, YVHA may seek to amend the Regulating Plan consistent with the Applicable City Ordinances, including seeking to add additional Units or square feet of non-residential uses to changes in demand. [YVHA acknowledges that shifting Units](#)

from sales to rentals may affect City property tax revenues and the fiscal impact analysis. If YVHA decreases sales unit numbers by more than 5%, YVHA shall update the fiscal impact analysis and replace lost property tax revenues.

b. Phasing Plan

The Brown Ranch phasing plan is shown in the attached Exhibit B.

Unit composition and density may be shifted between phases during the development approval process. YVHA may, in response to market conditions, funding, development capacity, and site conditions, seek to amend the Regulating Plan consistent with the applicable City Ordinances.

c. Parks, Trails, and Open Space

YVHA shall provide at least 70.3 acres of ~~mini parks~~, neighborhood parks (including mini-parks); and community parks, as generally shown in the attached Exhibit C, or as may be amended through the development review process. YVHA shall provide a regional park of at least 46 acres.

At least 125 acres of Brown Ranch shall be designated as Open Space through the development approval process, as generally shown on the attached Exhibit C. The specific location of Open Space shall be determined through the development review process.

YVHA shall provide trails as generally shown on the attached Exhibit C. The specific location and character of trails shall be determined through the development review process.

Parks, trails, and open space shall be phased with the development of each Neighborhood, and as the CDC requires as set forth in Section 7.C below.

———Dedication and maintenance provisions for Brown Ranch parks, open space, and trails are provided for in Section 7c below.

~~Brown Ranch will not be subject to any further requirements for the provision~~The City shall not require the dedication of additional real property for the purpose of parks, open space, or trails nor shall the City require the relocation of any of the parks, open space, or trails shown in Exhibit C as a condition of any City approval during the vesting term provided in Section ____, or any future extension of such term unless there is a material change to the General Plan of Development. The City may enforce CDC or other City requirements relating to parks, open space, or trails that do not relate to land area or location.

YVHA retains all development rights for the 114 acres of the YVHA property north of the Urban Growth Boundary (~~“North UGB Open Space”~~). YVHA shall maintain the North UGB Open Space~~area of the YVHA Property north of the Urban Growth Boundary~~ as open space for a minimum of twenty (20) years commencing on the later of completion of construction of

Neighborhood A or YVHA's completing construction of the trail system in the North UGB Open Space. Completion of Neighborhood A for purposes of this paragraph shall mean all public infrastructure has received preliminary acceptance and all of the land area of Neighborhood A has been platted. YVHA shall develop the trails in this area as shown in Exhibit C within two years of issuance of the first building permit for Neighborhood A and shall execute a license agreement in substantially the form of the attached Exhibit granting public access to the North UGB Open Space upon completion of construction of the trail system-

d. Wildfire Mitigation

Health Equity, Sustainability, and Resiliency Guidebook will impose a private regulatory scheme on development within Brown Ranch. The Guidebook will include recommendations identified in the *Increasing Wildfire Resilience at Brown Ranch* report prepared by the Community Wildfire Planning Center. These strategies ~~may shall~~ include 1) incorporating design features that reduce wildfire susceptibility in the Home Ignition Zone; 2) managing open space vegetation in strategic locations to support fire suppression tactics and further support defensible space; 3) providing adequate setbacks on peripheral edges of all neighborhoods from hazardous fuels and terrain features; 4) planning for the strategic location of trail networks to support fire suppression resource access and tactics; and 5) planning for evacuation opportunities. The provisions of the Guidebook shall be subject to and shall not supersede and federal, state, or local wildfire mitigation regulations.

Maintenance provisions for the wildfire mitigation measures are provided for in Section ___ below.

3. ~~PRIVATE~~-INFRASTRUCTURE PLAN FOR UTILITIES OTHER THAN CITY UTILITIES

YVHA shall pay from YVHA revenue, including without limitation YVHA tax revenues, grant proceeds, contributions from the City, ~~including allocations of STR Tax funds~~, and any other source in YVHA's discretion, all costs for the design and construction of all utility services necessary to serve the Brown Ranch, including, but not limited to, electricity, geothermal, telephone, gas, broadband, and cable television service, in accordance with applicable City or public utility company standards and specifications. YVHA shall dedicate to the City and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines.

Any contribution or payment for offsite electrical infrastructure will be agreed upon between YVHA and the electrical provider, and shall be paid from YVHA revenue, including without limitation YVHA tax revenues, grant proceeds, contributions from the City, ~~including allocations of STR Tax funds~~, and any other source in YVHA's discretion. The construction of utility services shall be phased with the development of each Neighborhood, and as the CDC requires.

YVHA reserves the right to provide utility service, in whole or part, to Brown Ranch, through the establishment of a District. ~~The City will reasonably consent to and approve the~~

~~formation of any such District.~~ Any District formed pursuant to this paragraph shall be allowed to use the utility easements and rights-of-way with Brown Ranch necessary for the installation and maintenance of utility lines.

~~The City will reasonably consent to and approve the formation of any other Districts, as defined in the Colorado Special District Act, which YVHA determines is beneficial to the development of Brown Ranch. The City agrees that the formation of a special district or districts by YVHA may be beneficial to the development of Brown Ranch and supports the formation of special districts. City approval of a service plan or service plans will depend on the details of the service plan and the services to be provided. The approval by the City of a service plan or plans or other action by the City relating to the formation of a special district or districts by YVHA shall be made in the sole discretion of the City Council on the basis of the criteria set forth in the City's Municipal Code, Chapter 13, Article VII.~~

The City agrees to reasonably provide non-financial support for any filings or applications by YVHA for permits and other approvals as may be required by State and/or federal agencies. If the City is the actual applicant of any required permits (e.g., CDOT access permits), the City will reasonably cooperate with YVHA in acquiring same.

4. GENERAL PUBLIC INFRASTRUCTURE PLAN

YVHA shall pay from YVHA revenue, including without limitation YVHA tax revenues, grant proceeds, contributions from the City, ~~including allocations of STR Tax funds~~, and any other source in YVHA's discretion, all costs for the design and construction of all public improvements to serve Brown Ranch, including, but not limited to, roads, curbs, gutters, sidewalks, sanitary and drainage sewers, water, and street lights, in accordance with applicable City or public utility company standards and specifications. YVHA shall dedicate to the City and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said public improvements, including public streets, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.

YVHA shall construct stormwater systems within Brown Ranch in conformance with City Engineering Standards.

YVHA shall construct multi-modal transportation within Brown Ranch in conformance with City Engineering Standards.

The Parties agree that YVHA shall be entitled to reimbursement of certain costs of construction of certain public improvements paid from YVHA revenues. YVHA shall not be entitled to reimbursement for costs paid by STR tax funds or other City revenues. The City agrees that it will require, as a condition of annexation of any portion of the West Steamboat Area Plan adopted June 19, 2006 (the "Benefited Property") that YVHA will be reimbursed by the developer of such portion of the Benefited Properties a proportionate share of the cost of such infrastructure which serves a Benefited Property. The proportionate share shall be reasonably determined by the City Council at the time of annexation and as a condition of annexation of a Benefitted Property

based upon the benefits received by the Benefited Property, which shall be determined, without limitation, by reference to: the cost savings to the Benefited Property by YVHA's construction of the additional infrastructure; age and physical condition of the infrastructure; and the length and capacity of utilities and roadways infrastructure used by the Benefited Property.

Nothing in this Paragraph shall prohibit YVHA from making application to the City for a Public Improvements Reimbursement Agreement pursuant to the requirements of the City's Community Development Code for reimbursement of expenses not otherwise reimbursable under this Paragraph. This provision shall not apply to any property annexed pursuant to an annexation ordinance adopted more than twenty (20) years from the effective date of the ordinance annexing the Brown Ranch.

The terms of the provision of City services related to the public infrastructure, and the maintenance of same, are provided for in Section ___ below.

The City agrees to reasonably provide non-financial support for any filings or applications by YVHA for permits and other approvals as may be required by State and/or federal agencies. In the event that the City is the actual applicant of any required permits (e.g., CDOT access permits), the City will reasonably cooperate with YVHA in acquiring same.

5. WATER & WASTEWATER SERVICE, OFF-SITE WATER & WASTEWATER FACILITIES

The City will provide water and wastewater services to Brown Ranch through its existing water and wastewater utility, which presently operates as an enterprise fund for purposes of the Taxpayers Bill of Rights ("TABOR"), Article X, Section 20 of the Colorado Constitution and which the City intends to continue to operate as an Enterprise Fund for purposes of TABOR. Units at Brown Ranch will be assessed utility plant investment fees (i.e., tap fees) on the same basis as other City water utility customers.

A. Water Service

The parties acknowledge that the determination as to whether the City has a reliable and secure water supply to serve the Brown Ranch and whether the City can make the determination regarding adequacy of the City's water supply required by C.R.S. 29-20-301, et. seq. and Section 25-78 of the City's municipal code depends on the completion of a Water Demand Analysis, which is expected to be complete in ~~May~~ June 2023. Based on current information, the parties acknowledge that the provision of water to Brown Ranch by the City will require the construction by the City of the following four additional elements to the City's water infrastructure:

1. The West Area Water Tank booster station, which must be constructed and accepted prior to the occupancy of any units at the Brown Ranch. This project will be constructed at City expense at an estimated cost of \$1,200,000. The City will use all reasonable efforts to construct this project prior to ~~2025~~2026.

1. 2. The US Highway 40 delivery pipeline, which must be constructed and accepted prior to the occupancy of any units at the Brown Ranch. This project is underway and will be constructed at City expense at an estimated cost of \$1,000,000. The City will use all reasonable efforts to construct this project prior to 2025. However, this project will be constructed in conjunction with the Core Trail West project, which is not currently funded, nor have all easements been acquired.

3. Onsite distribution facilities. Construction of these facilities shall be the responsibility of YVHA as provided in Section ____.

4. New water treatment facility, diversion system, pumps, raw water delivery line, clearwell, and treated water distribution lines (together “Elk River Water Treatment Facility”), which must be constructed and accepted prior to the issuance of building permits at Brown Ranch that would cause Brown Ranch water demand to exceed 800 Equivalent Residential Units (EQRs). Estimated costs of construction are \$40,000,000-\$58,000,000. The parties’ current estimate is that construction could begin at the earliest in 2028 with the treatment facility completed and operational by 2030. The parties acknowledge that the City does not own a site for this treatment facility or the necessary easements or other property rights for distribution of treated water to Brown Ranch. The parties acknowledge that the City owns certain water rights with authorized points of diversion and related storage rights that are adequate to provide sufficient raw water to the proposed treatment plant to allow for the full development of the Brown Ranch as described in this Section 5.

5. The parties acknowledge that the Elk River Water Treatment Facility will benefit the existing City water utility customer base by providing needed resiliency and redundancy to the City’s existing treatment facilities. Pursuant to the distribution modeling study completed by the City, Brown Ranch is allocated ____% of the need for the Elk River Water Treatment Facility.

The City shall be responsible for payment of that share of the costs of the Elk River Water Treatment Facility allocated to City water utility customers within the current district boundaries from revenue sources to be determined by the City, including without limitation City utility plant investment fees collected from City utility customers not located at the Brown Ranch.

6. YVHA shall be responsible for paying that share of the costs of the Elk River Water Treatment Facility allocated to Brown Ranch on the following terms:

a) ~~Units at Brown Ranch will be assessed utility plant investment fees (i.e., tap fees) on the same basis as other City water utility customers. Based upon current tap fees, which may increase subject to the study referenced above, and the planned number of units at Brown Ranch, this assessment will be approximately \$29,000,000.~~ Plant investment fees (i.e. taps fees) shall include a surcharge collected by the City for development at Brown Ranch attributable to the Elk River Water Treatment Facility, the amount of which shall be determined and adjusted from time to time by the City through periodic rate studies.

~~b) Payment to the City of that portion of the taps fees which are attributable to water will be contingent on the City allocating and distributing to YVHA STR Tax funds for the payment of the same. In the event the City distributes STR Tax funds to YVHA for water tap fees, and water tap fees are not owed at that time (e.g., no units have been built at Brown Ranch at the time of distribution of tax funds), YVHA shall pre-pay for future water tap fees, for which YVHA shall receive a credit for future water tap fees. YVHA shall be responsible for the payment of the difference, if any, between the Brown Ranch payment share and the anticipated plant investment fee surcharge from YVHA revenue including, without limitation, YVHA tax revenues, grant proceeds, contributions from the City, and any other source in YVHA's discretion.~~

~~c) YVHA shall have no responsibility for the payment of water tap fees for units at Brown Ranch, at the time of issuance of any building permit or otherwise, or for any payment for the Brown Ranch share of the costs of the Elk River Water Treatment Facility, unless and until the City allocates and distributes to YVHA STR tax funds for the payment of same. Plant investment fees shall be paid by YVHA at time of building permit application in accordance with City regulations. The timing of other payments, if any, shall be as determined by future negotiations of the parties.~~

7. Brown Ranch will not be subject to any further water related payments as a condition of any City approval or the issuance any building permit during the vesting term provided in Section ____, or any future extension of such term unless there are material changes to the General Plan of Development that increase demand on the City water supply infrastructure. The City reserves the right to revise plant investment fees in accordance with the provisions of the City's utility code.

~~The City will~~ It is the present intention of the City to use all reasonable efforts;

- a) ~~to acquire a site for the Elk River Water Treatment Facility prior to water demand at Brown Ranch exceeding 300 EQRs; The City will use all reasonable efforts~~
- b) ~~to begin construction of the Elk River Water Treatment Facility prior to water demand at Brown Ranch exceeding 600 EQRs. The City will use all reasonable efforts; and~~
- c) ~~to complete construction of the Elk River Water Treatment Facility prior to demand at Brown Ranch exceeding 800 EQRs.~~

Completion of the Elk River Water Treatment Facility will require the City to acquire a site, easements, and other real property interests for the construction of the Elk River Water Treatment Facility and related distribution lines and to issue bonds via the City's Utility Fund to defray construction costs. Site acquisition and issuance of bonds are subject to the legislative discretion of future City Councils.

B. Water Conservation

YVHA shall implement a water conservation and efficiency plan outlining YVHA's commitments to conserving water at Brown Ranch. The plan shall meet or exceed the City's current policy of a 10% reduction in treated water use in ten years. The City shall provide a water budget that is acceptable to YVHA for use as a baseline to evaluate the YVHA water conservation

and efficiency plan. The parties' staffs will collaborate to develop the water conservation and efficiency plan to include, without limitation, the following elements:

- 1) Significant reduction in private yards in favor of common spaces that are centrally managed;
- 2) Integrate water conservation with land use planning;
- 3) water budget agreement and monitoring plan;
- 4) Water-efficient building practices such as low flow fixtures;
- 5) Site design that preserves areas important for water quantity or quality;
- 6) Water re-use capabilities.

The water conservation and efficiency plan may be amended from time to time, in accordance with state guidelines, which currently provide for updates every seven years. Amendments shall be subject to ~~with~~ the approval of the City Public Works Director, which approval shall not be unreasonably withheld. In determining whether to approve a plan amendment, the Public Works Director shall consider whether the plan incorporates water conservation best practices as of the date of the amendment, whether best practices are appropriate to local conditions, and whether incorporation of best practices is consistent with YVHA and the City's goals of developing affordable and attainable housing.

a. Water Rights Dedication

Section 25-77 of the City's Revised Municipal Code requires the owner of property seeking new water service from the City to prepare a water demand report and to dedicate to the City a water supply equal to 110% of the water rights necessary to meet the requirements identified in the water demand report. Section 25-77 further gives the City Council discretion to accept cash in lieu of water rights in an amount equal to the cost of acquisition of the water rights described above.

YVHA does not own water rights necessary to meet the requirements identified in the water demand report. YVHA agrees to make a cash in lieu payment in the amount of \$_____. This payment shall be due and payable to the City prior to the issuance by the City of any land use approval or building permit for development that would cause Brown Ranch water demand to exceed 800 EQRs. ~~The annexation of Brown Ranch shall be exempt from the requirements of Sec. 25-77 (Water Rights Dedication Policy) of the Municipal Code.~~

b. Wastewater Service

The parties acknowledge that the provision of wastewater services to Brown Ranch by the City will require the following offsite improvements:

- i. Connection from onsite collection facilities in the Brown Ranch "West Basin" to the existing City trunk line running from Sleepy Bear/KOA to the existing wastewater treatment plant. The parties acknowledge that existing facilities provide the necessary connection from the Brown Ranch "East Basin." Costs of constructing these facilities shall be the responsibility of YVHA.

Commented [DF3]: YVHA to confirm that sufficient capacity exists.

- ii. Expanding the capacity of the existing wastewater treatment facility.

Pursuant to state law, design of the expansion of the wastewater treatment facility must commence when the wastewater treatment facility is at 80% capacity, and construction must commence when the wastewater treatment facility is at 90% capacity. The wastewater treatment facility is currently at 73% capacity.

The expansion of the wastewater treatment facility will be paid for by the City.

Units in Brown Ranch will pay wastewater tap fees on the same basis as other City wastewater utility customers. ~~Wastewater tap fees may be paid using STR Tax funds.~~

Brown Ranch will not be subject to any further sewer related payments as a condition of any City approval or the issuance any building permit during the vesting term provided in Section ____, or any future extension of such term, except in the case of a material change to the General Plan of Development that increases demand on City wastewater infrastructure. The City reserves the right to revise wastewater plant investment fees in accordance with the provisions of the City's utility code.

6. OTHER OFFSITE INFRASTRUCTURE

~~Except as otherwise provided in this Annexation Agreement as to offsite water and wastewater improvements, payment for any contribution from YVHA for offsite infrastructure improvements, including but not limited to any contribution for improvements to existing rights-of-way pursuant to CDC §602.F, shall be contingent on the City allocating and distributing to YVHA STR Tax funds for the payment of same.~~

~~———— If the City distributes STR Tax funds to YVHA for offsite infrastructure improvements, but no contribution is required from YVHA at that time (e.g., YVHA has not platted any part of Brown Ranch), YVHA will prepay for future required contributions based upon Brown Ranch's estimated proportionate share of the estimated cost of the offsite improvements.~~

~~———— YVHA shall have no responsibility for the payment of any required contribution for offsite infrastructure improvements unless and until the City allocates and distributes to YVHA STR tax funds for the payment of same.~~

A. YVHA Share.

YVHA shall be obligated to pay its proportionate share of the cost of offsite improvements necessary to offset the impacts of the development of Brown Ranch. Offsite improvements including, without limitation, transportation, parks, and public safety infrastructure. The parties agree that the development of Brown Ranch at full build out will create demand necessitating the public infrastructure improvements identified in Exhibit ____ (the "Offsite Improvements") and that YVHA's share of the cost of these improvements shall be as identified in Exhibit ____.

B. Neighborhood A.

The parties further agree that the development of Neighborhood A will trigger the need for the City to construct the infrastructure improvements identified in Schedule A of Exhibit ___ (“Schedule A Improvements”). The City agrees to credit STR tax funds in the amount of ___ to YVHA’s share of the cost of the Schedule A Improvements, subject to the appropriation of funds in accordance with the City’s regular budgeting process. The credit shall be calculated and accounted for on a per unit basis (i.e. cost of the Offsite Improvements/estimated number Brown Ranch units at full buildout).

- 1) The City shall restrict STR Tax funds for the purpose of design and construction of Schedule A Improvements at the time of receiving building permit application(s) for Neighborhood A units. Funds restricted for this purpose shall be held with other City funds but shall be accounted for as restricted funds and shall be used for no purpose other than the construction of Schedule A Improvements. The City may consolidate these funds to prioritize the construction of Schedule A Improvements. In the event a building permit expires or is terminated per the provisions of the Building Code or a permitted project is suspended indefinitely, the City may release the restriction on STR Tax funds that have been credited to the project by giving written notice of the release to YVHA.
- 2) YVHA shall be responsible for payment of the difference, if any, between the cost of the Schedule A improvements and the City’s STR Tax contribution. YVHA payments shall be pro-rated on a per unit basis and paid at the time of building permit application. The City shall restrict these funds for design and construction of the Schedule A Improvements. The City may consolidate these funds to prioritize the construction of Schedule A Improvements.
- 3) The City shall be responsible for identifying funding sources for that portion of the costs of constructing Schedule A Improvements not attributable to YVHA from the City’s Capital Improvements Fund, other developer contributions, grant funding, and other sources. The City does not guarantee a completion date for Schedule A Improvements. Their completion is expressly conditioned on the appropriation of funds by the City to satisfy the City cost share. However, the City shall consult with YVHA as to the timing and prioritization of construction of Schedule A Improvements.
- 4) The City anticipates the appropriation of STR tax revenues to satisfy the City’s contribution to YVHA’s share of the costs of the Schedule A Improvements to occur as follows:
 - a) Fiscal Year 2023 supplemental appropriation in the amount of \$ _____ (i.e. x% of Fiscal Year 2023 STR tax revenues);
 - b) Fiscal Year 2024 appropriation in the amount of \$ _____ (i.e. x% of Fiscal Year 2024 STR tax revenues);

c) Fiscal Year 2024 supplemental appropriation in the amount of \$ (proceeds of bond question to be submitted for voter approval at November 5, 2024 special election, if submitted and approved).

C. Other Neighborhoods.

1) YVHA shall be responsible for paying the remainder of the YVHA share for the Offsite Improvement on per unit basis. Each unit share shall be calculated in the same manner as provided above for Neighborhood A units and shall be payable at the time of building permit. The City will account for and use these funds in the same manner as provided for above.

2) The parties expect that the City STR Tax contribution to the Schedule A Improvements will not exhaust the share of City STR Tax revenues that the City intends to contribute to the development of Brown Ranch. The parties intend that the balance of these STR Tax revenues shall be applied to the YVHA share of the Offsite Improvements other than the Schedule A Improvements. The manner and timing of the City's contribution of these funds to YVHA shall be determined by subsequent negotiations of the parties.

3) YVHA acknowledges that the City's commitment to contribute STR tax revenues to the Brown Ranch project is subject to the appropriation of funds by the City Council for this purpose. Future City Councils may choose to increase or decrease the City's commitment or determine the manner or timing by which funds will be allocated to the development of Brown Ranch on the basis of considerations including, without limitation, YVHA's progress in developing Brown Ranch and addressing the City's shortage of affordable and attainable housing; the availability of grant funding from other sources to defray infrastructure costs; the existence of other opportunities for the City to incentivize the development of or conversion of existing housing stock to affordable or attainable housing; and future Council's determinations as to what uses of STR Tax funds will best serve the purposes for which the STR Tax was imposed.

7. CITY SERVICES/OPERATIONS/MAINTENANCE RESPONSIBILITIES

~~Subject to the following subsections, the~~ The City hereby agrees to provide City services ~~in the same manner and commensurate with the level of service provided to citizens generally to~~ Brown Ranch on the terms and conditions set forth below.

A. Streets

The City shall accept the Brown Ranch internal street system for maintenance in accordance with the provisions of the Community Development Code and the City's Engineering Standards. The parties estimated the City's annual operating costs for the maintenance of the YVHA street system to be \$800,000 in 2023 dollars. YVHA shall design and construct the Brown Ranch internal street system in accordance with standard street cross sections and specifications as set forth in the City's Engineering Standards. City maintenance shall include snow removal in

accordance with standard City practice; maintenance, repair, and replacement of pavement and appurtenances; and maintenance, repair, and replacement of stormwater and drainage facilities located within public rights of way.

Except as otherwise expressly provided in this agreement, the City shall provide the same level of service for Brown Ranch street maintenance that the City provides in other areas of the City. Service levels shall be in accordance with standards and practices applicable to pavement repair, pavement overlay schedules, maintenance and replacement of stormwater and drainage facilities, and prioritization of snow removal in accordance with street classification.

YVHA acknowledges that minimum City standards for right of way widths represent a compromise between the efficient use of land and the effective operation of roadways for multi-modal transportation and parking uses. Staff recommends that YVHA incorporate into the planning of its internal street system the effect of winter conditions, snow removal operations, and snow storage on roadway width; the availability of on street parking; and sidewalk maintenance. Use of minimum City standards may result in operational compromises and increased costs for snow plowing and removal during some winter seasons.

Whether the City will accept Brown Ranch alleys for maintenance purposes will depend on the City's approval of the design of each alley that YVHA requests the City to maintain, including whether YVHA proposes to grant easements or other property rights adequate to accommodate the storage of snow removed from alleys. Adequate snow storage is mutually agreed to include utility and snow storage easements as described in the Engineering Standards, plus pocket snow storage easements equal to or greater than 1 square foot for every 5 square feet of pavement surface. Pocket snow storage easements shall be located immediately adjacent to the alley, at intervals no less than once per block. Pocket snow storage easements must be free and clear of any obstructions that limit the use of the easement as intended. Square-shaped pocket snow storage easements are preferable, though no easement dimensions may be less than 18 feet in width.

The City will make this determination in connection with its CDC review of the subdivision plat or plats that propose the dedication of alleys and acceptance of the alleys by the City for maintenance purposes. YVHA acknowledges that the CDC does not address this issue and that the City's Public Works Director shall have the discretion to approve or deny alley maintenance requests based on the application of the terms contained herein.

The City generally provides a level of snow removal services that depends on storing snow in road rights of way and/or easements adjacent to the roadway. The City provides a level of service in some commercial areas, such as the downtown commercial district, that incorporates the removal and transportation of snow to a central snow storage facility. The City will provide this level of service in limited commercial or school zones at the Brown Ranch, as depicted as Mixed-Use Village Core in the attached Exhibit B. YVHA shall provide snow storage for snow removed from these zones at internal Brown Ranch sites. Snow storage for Neighborhood A is depicted and described in Exhibit D. Future commercial and school zone snow storage will be provided for in future plats.

The City's assumption of maintenance obligations for all or parts of the Brown Ranch street system will require the City to implement a sixth plow route in order to maintain existing service levels. Capital costs to implement a sixth plow route, including acquisition of a new motor grader with wing, sand truck with plow, loader with bucket and black, and a storage facility, are estimated at \$847,000 in 2023 dollars. These capital costs will be paid for by YVHA from YVHA revenue, including without limitation YVHA tax revenues, grant proceeds, contributions from the City, ~~including allocations of STR Tax funds~~, and any other source in YVHA's discretion. Alternatively, YHVA may defer the payment of the foregoing capital costs and hire a third-party contractor to provide plow service to Brown Ranch for an indeterminate period of time. The City will commence plow service at Brown Ranch after receiving delivery of the equipment described above and hiring and training operators. The City estimates the lead time for equipment and personnel to be fourteen months from ~~upon~~ payment by YVHA of the requisite capital costs.

B. Transit

- 1) ~~The parties acknowledge that existing City policy will require YVHA to assume responsibility for onsite capital costs of transit facilities necessary to the provision of transit services. The City will be responsible for operational costs and maintenance of shelters, shelter pads, and pullout lanes. City shall also be responsible for acquisition of busses. Adjacent property owners will be responsible for the maintenance of sidewalks providing access to transit stops.~~
- 2) The City's existing revenue sources are adequate to extend service to Brown Ranch neighborhood A. The City would accomplish the service extension by relocating the existing western terminus of SST routes from the current KOA site to the Slate Creek Road entrance to Brown Ranch (hereafter "US Hwy 40 Service"). The City agrees to provide the US Hwy 40 Service to Brown Ranch. Frequency of service, bus capacity, and other operational decision shall be subject to the discretion of City Council pursuant to the City's annual budget process.
 - a) The estimated costs to provides the US Hwy 40 level of service are as follows:
 - i) \$1,000,000 capital costs for the relocation of the western terminus of SST routes;
 - ii) Annual operating costs increase would be negligible;
 - b) YVHA agrees to assume responsibility for capital costs of relocating the western terminus of SST routes.
 - c) The City agrees to assume the responsibility for any increase in operating costs to provide US Hwy 40 Service.
 - d) Contracted microtransit service to connect the SST routes to internal Brown Ranch sites is estimated to cost \$400,000 annually. The City is not able to provide microtransit service within Brown Ranch and does not commit to do so as part of the provision of the US Hwy 40 Service. If microtransit service is to be provided to Brown Ranch it shall be at the expense of YVHA.

~~YVHA shall construct, at its expense, transit infrastructure and facilities within Brown Ranch as provided for in Section 4.~~

~~The City shall provide transit service to Brown Ranch commensurate with the level of service provided to other bus lines in the City.~~

~~The City shall be responsible for the operational costs of providing transit service to Brown Ranch. The City shall be responsible for the acquisition of any additional busses. The City shall be responsible for the maintenance of transit infrastructure and facilities within Brown Ranch.~~

C. Parks, Trails, and Open Space

A. Park, Trails, and Open Space Plan. YVHA shall construct, at its expense, the Neighborhood Parks (including Mini-parks) and Greenways identified in Section 2.c and Exhibit C. ~~The YVHA shall dedicate the~~ Neighborhood Parks and Greenways ~~will be dedicated~~ to the City following construction and ~~accepted~~ acceptance of the Neighborhood Parks by the City for Maintenance.

YVHA shall ~~dedicated~~ to the City land for the Community Parks and Regional Park identified in Section 2.c and Exhibit C. Construction and maintenance of the Community Parks and the Regional Park shall be the responsibility of the City.

YVHA shall construct, at its expense, the trails identified in Section 2.c and Exhibit C. ~~The YVHA shall dedicate~~ trails within Brown Ranch ~~will be dedicated~~ to the City following construction and ~~accepted~~ acceptance of the trails by the City for maintenance.

YVHA shall construct, at its expense, the open space identified in Section 2.c and Exhibit C. Open space within Brown Ranch will be dedicated to the City and accepted by the City for maintenance.

The parties will work together to coordinate construction activities to allow for efficient use of cut and fill materials to the extent possible.

~~A.B.~~ Phasing. Parks (including Greenways), open space, and trails shall be constructed and dedicated to the City simultaneously with the platting and development of any adjacent residential property and in accordance with CDC requirements. It is the intention of the parties that parks, open space, and trails be provided in proportion to increased demand caused by residential development. If development and dedication of parks, open space, and trails will result in the construction and dedication of a disproportionately low share of the overall parks, open space, and trails plan compared to the share of overall residential development, the parties will work together to identify which parks, open space, and trails elements should be developed to resolve the disparity.

Maintenance of sidewalks shall be the responsibility of the adjoining property owner, as provided for in the Code.

Commented [DF4]: Is this specific to parks?

D. Police, Fire, and EMS Services

- 1) The Steamboat Springs Police Department and Steamboat Springs Fire Rescue shall provide police, fire, and EMS services (“Public Safety Services”) to Brown Ranch.

2) Provision of Public Safety Services to Brown Ranch will require the construction of a combined public safety facility. YVHA agrees to dedicate the site for this facility at a mutually agreed upon location to the City and the Steamboat Springs Area Fire Protection District (“SSAFPD”) as part of the initial plat of the first phase of development, currently anticipated to be Neighborhood A. The combined public safety facility shall include the following design and programming elements:

a) Approximately 22,000 sq/ft station that includes:

i) 6 Fire Apparatus Bays – 5,900 sq/ft

ii) Police Space – 2,040 sq/ft (two vehicle bays – 840 sq/ft);

b) Parking for 30 vehicles;

c) Flat paved space for Fire/PD training – 1,000-1200 sq/ft; and

d) Access and maneuvering areas accommodating fire vehicle turning radii.

The parties anticipate that accommodating the design and programming elements described above will require a site of approximately 50,000 sq.ft. to 87,000 sq.ft. YVHA agrees to dedicate to the City and SSAFPD and the City agrees to accept from YVHA the dedication of a site large enough to accommodate a combined public safety facility with the design and programming elements described above.

The City and SSAFPD shall be responsible for design of the combined public safety facility and to provide a schematic design by _____. The schematic design shall be used to determine the necessary land area, location, and configuration of the combined public safety facility.

3) The public safety station (police and fire) is estimated to cost approximately \$21,550,000. YVHA agrees to provide a proportion of the total construction costs estimated to be approximately \$16,087,200 or 75% as defined in Exhibit ____ (Exhibit to be provided by City) (estimates are 2023 dollars and are expected to increase with inflation). YVHA funding for the public safety building shall be provided to the City of Steamboat Springs upon the completion of the streets and associated infrastructure of neighborhood A.

YVHA shall provide the City of Steamboat Springs and the Steamboat Springs Area Fire Protection District a proportion of the necessary funds to purchase the fire apparatus and start up equipment identified in Exhibit (?). Current estimates for apparatus and equipment are \$3,218,400 with YVHA proportion estimated at \$2,509,648 or 78% of total costs as defined in Exhibit (?). Funds for fire apparatus and equipment shall be provided along with funds for construction of public safety building.

YVHA shall provide the City of Steamboat Springs the funds to purchase necessary police vehicles and start up equipment estimated at \$438,000.

E. Fiscal Sustainability/General Fund Operations

1. [The parties fiscal impact analysis identifies a multi-million dollar impact to the City's general funds that results from extending City services to Brown Ranch.](#)
2. [The increased cost of services shall be offset by the following funding source\(s\):](#)

8. AFFORDABILITY/ATTAINABILITY OF HOUSING

[A. General.](#) Pursuant to C.R.S. 29-1-204.5 and the Intergovernmental Agreement Establishing the Yampa Valley Housing Authority, YVHA will develop Brown Ranch in accordance with its mission to develop affordable and attainable housing for low- and moderate-income households and for the local workforce. All units sold or rented within Brown Ranch will be subject to restrictions requiring the owner or renter to work for an employer physically located within Routt County, use the unit as their sole primary residence (to prevent ownership by second homeowners), and short-term rentals will be prohibited throughout Brown Ranch.

[The annexation of Brown Ranch is subject to the affordable and attainable housing provisions of the West of Steamboat Springs Area Plan \("WSSAP"\), which establishes a policy of permanent affordability for affordable and attainable housing. WSSAP establishes a minimum requirement that 20% of units in WSSAP be affordable to households at 80% AMI. WSSAP requires that the City ensure that new housing that is required by WSSAP or that receives significant public subsidies remains affordable in the future.](#)

[B. Housing Demand Study.](#) The 2021 Housing Demand Study has identified the current housing needs in Routt County based upon income levels. Over the course of the full build-out of Brown Ranch, the unit and income mix will be allocated to address the housing needs identified in the Demand Study. Development of Brown Ranch will comply with the affordability requirements of the WSSAP.

YVHA will periodically update the Demand Study to ensure that housing needs are being appropriately addressed. Updates to the Demand Study will be presented to City Council through YVHA's annual report.

[C. Affordability Guarantees for Grant Units.](#) Much of the housing at Brown Ranch will be financed using state and federal grants, tax credits, etc. Housing projects using these financing mechanisms will be subject to the affordability requirements of the relevant program.

[D. Affordability Guarantees for Units not Subject to Grant Requirements.](#) For housing projects in Brown Ranch which are not subject to specific affordability requirements pursuant to the preceding paragraph, for-sale Units will be encumbered by the Deed Restriction attached hereto as Exhibit E, at the appropriate AMI levels for the Unit, and for-rent Units will be encumbered by the Use Covenant attached hereto as Exhibit F, at the appropriate AMI levels for the Unit. The Deed Restriction and Use Covenant may be reasonably modified over the course of the development of Brown Ranch to address changes in circumstances, law, or best practices.

[E. —Implementation.](#)

1. Affordability and Attainability Development Agreements. As a condition of any Final Plat or Final Development Plan approval, YVHA and any other owner of the subject property shall execute a Development Agreement with the City that includes:

- b) A statement identifying whether the lot(s) or unit(s) being approved will be subject to the grant specific affordability and attainability requirements referenced in Subsection C, the deed restriction referenced in Subsection D, or the Use Covenant referenced in Subsection D;
- c) The terms of the affordability and attainability requirements that are to be imposed on the lot(s) or unit(s);
- d) The timing and procedure for implementing the affordability and/or attainability requirements.
 - i) In the case of lots or units that are to be offered for sale, the development agreement shall provide that the Deed Restriction referenced in Subsection D or a deed restriction implementing the grant requirements referenced in Subsection C shall be recorded simultaneously with the final plat.
 - ii) In the case of lots or units that are to be owned by YVHA or jointly by YVHA and YVHA affiliates, the development agreement shall provide for the imposition of the Use Covenant referenced in Subsection D or any covenant imposing the grant requirements referenced in Subsection C prior to issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.

2. Approval. City shall approve the Development Agreement if the terms and conditions of the proposed affordability and attainability requirements include the following elements:

- a) Local employment;
- b) AMI qualification limits;
- c) Primary residence requirement;
- d) Appreciation caps (sales units)/rental rate caps (rental units)
- e) Prohibition on short term rentals;
- f) Prohibition on ownership of other real property;
- g) Provision ensuring permanence of affordability/attainability requirements;
- h) Enforcement procedures, including at time of application and during occupancy.

3. Permanence. The parties acknowledge that for purposes of Subparagraph 2.f), permanence means a perpetual restriction on the use and occupancy of the subject property. However, the parties agree and acknowledge that perpetual restrictions may not be consistent with the financing structure of Low Income Housing Tax Credits (“LIHTC”) projects. The parties expect that:

- a) LIHTC projects will be an essential component of its strategy to develop housing for very low and low income (30% to 60% AMI) households;
- b) YVHA will retain an equity interest in LIHTC projects;
- c) YVHA will hold a right of first refusal to purchase LIHTC projects on the expiration of the project affordability and attainability requirements;

- d) LIHTC projects will constitute approximately thirty (30) percent of the rental units to be developed at the Brown Ranch; and
- e) LIHTC projects will include a minimum term of forty (40) years for their affordability and attainability requirements.

The City will deem affordability and attainability requirements for LIHTC projects to be permanent for purposes of Subparagraph 2.f) in the circumstances described above provided that each of the circumstances above applies to the LIHTC project and provided that YVHA agrees to give the City one (1) years notice of expiring affordability and attainability requirements for LIHTC projects and to consult with the City regarding the YVHA's decision whether to exercise its right of first refusal.

The City acknowledges the need for flexibility to allow YVHA to access all available grant sources to fund development of affordable and attainable housing at Brown Ranch. The City Council may apply the principles described above on a case by case basis to approve other types of deed restrictions applicable to Very Low and Low Income grant projects.

4. No Waiver. YVHA acknowledges that the development of permanent affordable and attainable housing is a material inducement to the City's annexation of the Brown Ranch and to the concessions made by the City in this Annexation Agreement. No City official is or shall be authorized to waive the requirement of execution of the Development Agreement(s) required by this subsection and no party shall be entitled to rely on any Final Plat or Final Development Plan approved in violation of this Subsection. Any lease or sale of a unit or lot developed in violation of this Subsection shall be voidable by the City.

5. All residential developments within Brown Ranch will be subject to the foregoing affordability and attainability measures, except that YVHA may sell approximately 4.8 acres the southeast area of Brown Ranch, shown on Exhibit G, without any affordability requirement. If the event that YVHA sells or otherwise conveys any other portion of Brown Ranch to a third-party developer, the conveyance will be subject to the property being developed with affordability, attainability, and workforce requirements.

YVHA may convey land in Brown Ranch for non-residential purposes to the City or community partners and for projects with a community benefit (e.g., for the development of a special use sports facility). Any such conveyance will be subject to a use restriction by which the transferee would be required to develop the property for a specific purpose, and the transferee would be restricted from reselling the property. Maintenance of property conveyed to third parties shall be allocated between YVHA and the third party.

The City agrees that the foregoing satisfies the affordability requirements of the West Steamboat Springs Area Plan (WSSAP).

9. SHORT-TERM RENTAL TAX

City Council agrees to annually review the allocation of the Short-Term Rental Tax funds. City Council agrees to target allocation of at least ~~75~~50% of the Short-Term Rental Tax funds to

Brown Ranch and YVHA. The target allocation shall be based on actual collections and the timing of the allocation shall be in the discretion of the City Council.

The Parties hereby agree and acknowledge that all costs and expenses of the development of Brown Ranch shown in the attached Exhibit are eligible for use of the Short-Term Rental Tax funds.

10. POST-ANNEXATION LAND USE APPROVALS

The City shall approve text amendments to the CDC, prior to annexation, at the time of annexation, or within a reasonable timeframe thereafter, or otherwise modify its land use review practices, to establish the procedures set forth in this Subsection. YVHA acknowledges that the zoning of the Brown Ranch and the amendment of CDC procedures is a legislative act subject to the legislative discretion of the City Council and that the City cannot enter into a binding contractual commitment regarding the zoning of Brown Ranch or the amendment of the CDC. No assurances of zoning has been made to or relied upon by YVHA.

In the event the City does not apply TND zoning with the Transect Zones to Brown Ranch within sixty (60) days of the effective date of the annexation ordinance or otherwise comply with the provisions of this Subsection, the sole and exclusive remedy of YVHA shall be the withdrawal of the petition for annexation, which may be exercised by giving written notice of withdrawal to the City between sixty-one (61) and ninety (90) days of the effective date of the annexation ordinance.

~~which shall provide for the following:~~

A. The City is in the process of creating new TND Transect Zones T4N and T5TC2. The City and YVHA will work together to agree on dimensional standards for the new transect zones that will allow ~~New zone districts will be established, to be referred to as Brown Ranch Transect Zones ("BRTZs"), with the dimensional standards of these zones district reasonably agreed to by YVHA and City Staff in order for~~ Brown Ranch to be developed according to the Development Plan. All Residential Use Classifications, all Eating and Drinking Establishments, all Vehicle Parking, all Civic, Public, and Institutional Use Classifications, excluding Utilities, use categories shall be designated as a Use-by-right in the proposed _____ Transect Zone.

The parties anticipate that Transect Zones T4N and T5TC2 will be adopted by the City Council prior to the end of 2023. If the Transect Zones are adopted and effective as of the effective date of the ordinance annexing Brown Ranch or are expected to be adopted within forty-five (45) days of the effective date of the annexation ordinance, City staff shall propose the initial zoning of the Brown Ranch to be TND with transect zones T4N and T5TC2.

If Transect Zones T4N and T5TC2 are not anticipated to be adopted and effective within forty-five (45) days of the effective date of the annexation ordinance, City staff shall propose the initial zoning of the Brown Ranch using the existing TND transect zones _____. Once Transect Zones are adopted, City staff shall propose and support a zoning map amendment that rezones the Brown Ranch by replacing the original TND transect zones with the Transect Zones.

~~2. All Residential Use Classifications, all Eating and Drinking Establishments, all Vehicle Parking, all Civic, Public, and Institutional Use Classifications, excluding Utilities, use categories shall be designated as a Use by right in the BRTZs.~~

~~CDC § 713 and 714, Preliminary Plat and Final Plat applications, shall specify that for properties zoned BRTZ the applications will be reviewed and approved pursuant to Administrative Review.~~

~~C. CDC § 739, Collateral, shall provide for an exemption from the collateral requirement for Final Plats which include properties zoned BRTZ. shall be interpreted by the Director to allow for the waiver of collateral requirements for final plats and building permits if all lots in the proposed subdivision are to be developed by a YVHA affiliate. Any collateral requirement waived pursuant to this interpretation may be applied by the City to applications for Certificates of Occupancy or Temporary Certificates of Occupancy. This interpretation shall not be deemed to permit the approval of final plats or building permits for subdivisions that do not meet Fire Department requirements for a hard driving surface and hydrants providing adequate fire flows.~~

~~D. CDC § 602.L, Open Space, Parks, and Amenity Space, § 605.G, Parks and Open Space, and § 606, TND Parks and Open Space Standards, shall be waived as to provide for an exemption from the land area and location requirements of those Sections for Preliminary Plats and Final Plats for Brown Ranch, which include properties zone BRTZ.~~

~~E. Notwithstanding the provisions of CDC § 709(3)(b) and (c), § 708 and 709 shall specify that Conceptual Development Plans and Development Plan applications which include properties zoned BRTZ in Brown Ranch shall be reviewed and approved pursuant to Administrative Review.~~

~~7. F. CDC § 413, Phasing, shall be waived to the extent necessary for phasing plans for approved Brown Ranch development to be amended by the Director. shall provide for an exemption from the phasing standards for land use applications including properties zoned BRTZ. However, no Certificates of Occupancy will be granted for any development until critical improvements have been constructed.~~

~~8. Table 702-1 shall specify that the Decision Maker for Major Adjustments and Major Variances shall be the Planning Director.~~

~~G. The City shall explore the amendment of CDC § 719.D(3) shall specify that for Variances for applications which include properties zoned BRTZ to add, in addition to Unnecessary Hardship, Practical Difficulty, and Acceptable Alternative, the criteria for approval includes a criterion for approval relating to the development of affordable or attainable housing:~~

~~The proposed variation is necessary to achieve the affordability and/or attainability goals of the proposed development.~~

11. DEDICATIONS OF LAND

A. YVHA shall dedicate to the City and to the Steamboat Springs Area Fire Protection District, or to the appropriate governmental entity, approximately 50,000 square feet of property a 1.2-2.0 acre site for a fire station, generally in the areas shown in the Development Plan as provided in Section 7.C. YVHA shall dedicate the site in the initial plat of the first phase of development, currently anticipated to be Neighborhood A. ~~The dedications will occur upon commencement of Phase 2.~~

B. YVHA will dedicate the parks, trails, and open space identified in Section ~~32.c~~ to the City, and the City will accept the same for maintenance. ~~The dedication of YVHA shall dedicate the neighborhood parks, greenways, and trails to the City will occur~~ upon completion of construction of each park, greenway or trail, and ~~the dedication of shall dedicate~~ open space ~~will occur~~ upon platting of any parcel of adjacent land.

C. YVHA intends to partner with the Steamboat Springs School District for the development of a new school. Size, location, and timing of dedication of the site shall be determined by agreement of YVHA and the Steamboat Springs School District.

D. All approved final plats for any portion of the Property shall include a plat note imposing an avigation easement in a form approved by the City Attorney and Airport Director.

12. SUSTAINABILITY MEASURES

YVHA has articulated a sustainability framework in the Brown Ranch Community Development Plan with sustainable design considerations at both the development scale and building scale. The sustainability measures shall include, but not be limited to:

- i. Developing Health Equity, Resiliency, and Sustainability Design Guidelines (the “Guidelines”) that establish minimum criteria for all vertical development at Brown Ranch and are aligned with actions identified in the Routt County Climate Action Plan.
- ii. Exploring and innovating when feasible with respect to energy conservation, geothermal heating and cooling, photovoltaic energy and storage, energy-efficient building envelopes, energy-efficient fixtures and building systems, solar orientation and passive solar gain, meeting the highest standards for indoor water efficiency, and minimizing the need for outdoor irrigation.
- iii. Optimizing and planning for electric vehicle and bicycle transportation.
- iv. Preserving and restoring the section of the Slate Creek riparian corridor that passes through Brown Ranch.

YVHA shall be responsible for adopting the Guidelines and implementing the policies set forth in this Section. YVHA shall provide a report and draft of the Guidelines prior to their adoption, including an assessment of YVHA’s plans to implement the other policies set forth in this Section. Thereafter, YVHA shall provide an annual status report to the City Council regarding the Guidelines and implementation of other sustainability policies described in this Section.

13. VESTED PROPERTY RIGHTS

a. **Vested Property Rights.** The City will approve the creation of vested property rights for the Property pursuant to the Vested Property Rights Act, C.R.S. §24-68-101 et seq. In the event of conflict between this Agreement and the Vested Property Rights Statute or Municipal Code, this Agreement shall prevail.

b. **Vesting Term.** The initial term of vesting shall be ~~40~~ten (10) years commencing upon the date of ~~recording the Annexation Ordinance and Map~~approval of the Framework Regulating Plan. The initial ten (10) year vesting term shall be extended by an additional ten (10) year term if YVHA completes the construction of Neighborhood A prior to the expiration of the initial vesting term. Completion of construction of Neighborhood A shall mean that all of the following have occurred: i) all public infrastructure has received preliminary acceptance; ii) all land area has been platted; and iii) YVHA has constructed and received certificates of occupancy for four hundred twenty-nine (429) dwelling units.

c. **Site-Specific Development Plans.** YVHA and the City agree that the Framework Regulating Plan constitutes an approved "site specific development plan" as defined in the Vested Property Rights Statute, and that pursuant thereto, YVHA and its successors and assigns shall have vested rights to undertake and complete the development and use of the Property ~~under the terms and conditions~~as to the minimum densities and uses approved thereof by the Framework Regulating Plan and with the exactions and real property dedications described herein during the vesting term established in Paragraph (b) above. The vesting term shall be memorialized in a Development Agreement in connection with the approval of the Framework Regulating Plan ("Framework Regulating Plan Development Agreement").

d. **Rights Not Vested.** The establishment of rights vested under this Agreement, the Regulating Plan, and Regulating Plan Development Agreement shall not preclude the application by the City of City ordinances and regulations, including, without limitation, the following:

- i. City building, fire, plumbing, engineering, electrical, and mechanical codes and other similar technical codes and standards of the City;
- ii. City architectural, landscaping, and other development standards that are not inconsistent with the uses and densities permitted by the approved Framework Regulating Plan;
- iii. City regulations regarding the subdivision of land to the extent the same do not conflict with the uses and densities permitted by the approved Framework Regulating Plan or the provisions of this Annexation Agreement relating to YVHA contributions to offsite infrastructure;
- iv. Traditional Neighborhood Development standards to the extent the same do not conflict with the uses and densities permitted by the approved Framework Regulating Plan;
- ~~ii-v.~~ Applicable federal regulations;
- ~~iii-vi.~~ Any other general City ordinance or regulation that does not conflict with the uses and densities permitted by the approved Regulating Plan.

14. TERM

The term of this Agreement shall commence on the effective date (“Effective Date”) of the City ordinance annexing the Property and approving this Agreement (the “Annexation Ordinance”) and shall continue until the obligations of ~~the Developer~~ YVHA hereunder have been completed, satisfied, or financially secured to the satisfaction of the City (the “Term”), but not less than the period of vesting set forth in Section _____. After the expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect the (a) annexation of the Property to the City; (b) any common law vested rights obtained prior to such termination; (c) any rights arising from City permits, approvals, or other entitlements for the Property or the Development which were granted or approved concurrently with, or subsequent to the approval of this Agreement, the TND Zone District, and the Framework Regulating Plan; ~~(d) the parties’ rights pursuant to Section _____ concerning the prevailing party’s right to fees and costs in the event of litigation.~~ Termination of this Agreement shall not be construed to cause the termination of any of the agreements entered into pursuant to this Agreement which are of longer duration than this Agreement.

15. ANNEXATION CONTINGENCIES

Final approval of the Annexation Ordinance shall not be deemed to have occurred if on or before the thirtieth (30th) day following the effective date of the Annexation Ordinance either a) legal proceedings are commenced challenging the Annexation Ordinance or b) a petition is submitted to the City Clerk for a referendum on the Annexation Ordinance. Either party may, but shall have no obligation, to defend legal proceedings concerning the validity of the Annexation Ordinance.

In the event of a legal challenge and/or referendum, final approval shall occur upon final and non-appealable resolution of legal proceedings and/or referendum results affirming annexation of the Property. The annexation of the Property to the City shall not be effective until the occurrence of final approval.

If a referendum challenge to the Annexation Ordinance succeeds, this Agreement and all provisions contained herein shall be null and void and of no further effect. In the event the Annexation Ordinance or any portion thereof is voided by the final action of any court, this Agreement and all provisions contained herein shall be null and void and of no further effect unless the parties agree in writing to ratify the Agreement and seek to cure the legal defect(s) that resulted in the court action. If the parties agree in writing that such a cure is successful, YVHA may re-apply for annexation.

YVHA may withdraw the petition for annexation and terminate this Agreement if any legal challenge remains unresolved one (1) year after the effective date of the Annexation Ordinance. City shall not be responsible for processing applications for land use approvals relating to the Property and YVHA shall not be responsible for making payment, constructing improvements, or

dedicating interests in real property to the City during the pendency of any legal challenge to or referendum regarding the Annexation Ordinance.

16. MORATORIA, GROWTH CONTROL, AFFORDABLE HOUSING AND/OR INCLUSIONARY ZONING MEASURES

No development moratorium or growth control limitation shall be applied against the Property unless the same is applied throughout the City generally, and which does not, in its structure or application, have a disproportionate impact upon the Property as compared to other properties. In addition, beyond the commitments in this Agreement, YVHA shall not, during the vesting term set forth in Subsection ___, be subject to any further affordable housing contributions and/or assessments, including but not limited to, affordable housing contributions, inclusionary zoning or other similar ordinance or rule intended to address the City's housing ~~problem~~shortage.

17. MISCELLANEOUS

a. **Effective Date.** This Agreement is contingent upon the City approval of ~~the annexation~~an Ordinance annexing the Brown Ranch in accordance with the Municipal Annexation Act and the Community Development Code and shall become effective as provided for in Paragraph ___.

b. **Parties' Authority.** The City and YVHA represent that each has the authority to enter into this Agreement according to applicable Colorado law and the City's Home Rule Charter and Ordinances, and each represents that the terms and conditions hereof are not in violation of any agreement previously entered into by such party. This Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Agreement are effective.

c. **Recording.** This Agreement shall be recorded in the Routt County Clerk and Recorder's Office in order to put prospective purchasers of the Property or other interested parties on notice as to the terms and conditions contained herein.

d. **Entire Agreement.** This Agreement and the exhibits hereto represent the entire understanding between the parties, and no other agreement concerning the Property, oral or written, made prior to the date of this Agreement, which conflicts with the terms of this Agreement shall be valid as between the parties.

e. **Modification.** This Agreement may be modified by the written agreement of the City and YVHA. No approval of a modification to this Agreement shall be required of any owner or person or entity holding any interest in any portion of the Property unless such right of approval has been specifically assigned to such owner, person, or entity in a written instrument of assignment, but nothing herein shall prohibit the City from requiring the approval of any such amendment in appropriate cases by other owners within the Property as a condition of the City

agreeing to such amendment. An amendment to the TND zone district regulations, Regulation Plan, or City ordinances or other City regulations shall not constitute or require an Amendment to this Agreement. All amendments to this Agreement shall be in writing, shall be recorded with the County Clerk and Recorder of Routt County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property, unless otherwise specified in the amendment.

f. **Additional Remedies.** If at any time any material part hereof has been breached by YVHA, the City may, in addition to other remedies, withhold approval of any or all building or other permits applied for by YVHA on its Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.

g. **Recordation/Binding Effect.** ~~Once the contingencies set forth in Section ___ have been satisfied, the~~ This Annexation Agreement shall be recorded and all agreements and covenants as set forth herein shall be binding upon YVHA and its successors and assigns, and shall constitute covenants or servitudes that shall touch, attach to, and run with the land that constitutes the Property. The burdens and benefits of this agreement shall bind and inure to the benefit of all persons who may hereafter acquire an interest in the Property, or any part thereof. ~~YVHA shall as a condition of approval of the Annexation Ordinance execute and record a document acknowledging and ratifying the binding effect of this Annexation Agreement on its successors and assigns to the Property.~~

h. **Severability.** In case one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

i. **Incorporation of Exhibits.** Exhibits A through G, inclusive, which are attached hereto, are incorporated herein by reference.

~~j. **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.~~

Commented [DF5]: The City proposes deletion of the attorney fee provision.

~~k.~~ j. **Notices.** Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

City: Dan Foote
City Attorney
City of Steamboat Springs
137 10th St.
Steamboat Springs, CO 80487

with copy to: Gary Suiter
(which shall not constitute notice) City Manager
City of Steamboat Springs

137 10th St.
Steamboat Springs, CO 80487

YVHA: Yampa Valley Housing Authority
Attn: Jason Peasley
2100 Elk River Road
Steamboat Springs, CO 80477

with copy to: Elevation Law Group, P.C.
Attn: George M. Eck III
P.O. Box 770908
Steamboat Springs, CO 80487

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given on the 2nd day following mailing. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process

~~h.k.~~ **Waiver.** The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by either party waiving such rights.

~~m.l.~~ **Applicable Law.** This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado.

~~n.m.~~ **Counterparts.** This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.

~~o.n.~~ **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

~~p.o.~~ **Terminology.** Wherever applicable, the pronouns in this Agreement designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

~~q.p.~~ **Assignment.** The rights and obligations of YVHA under this Agreement may not be assigned to a party ~~unaffiliated with YVHA~~ other than a YVHA affiliate without prior written approval of the City, which may be granted or withheld by the City Council acting in its sole and exclusive discretion. ~~Such approval shall not be unreasonably withheld or delayed unless the City Council reasonably believes such denial is justified based upon the reputation, credit, standing, or other similar qualifications of the proposed assignee.~~ No assignment shall relieve YVHA of its obligations under this agreement unless without prior written approval of the City, which may be

| granted or withheld by the City Council acting in its sole discretion. The express assumption of any of YVHA's obligations under this Subsection with the written consent of the City will thereby relieve YVHA of such obligations with respect to the matter so assumed and assigned.

~~s.g.~~ **No Third-Party Beneficiaries.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and YVHA, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intent of the City and YVHA that any party other than the City or YVHA receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

~~s.r.~~ **Colorado Constitution, Article X, Section 20.** This Agreement is not intended by the parties to create, and does not create, any multi-fiscal year financial obligation of the City or YVHA. All financial obligations of the City or YVHA hereunder are expressly subject to the annual appropriation of funds by the City Council or the Board of Directors, acting in their sole discretion.

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

[Signature pages follow]