

## **COST AGREEMENT**

THIS AGREEMENT is made by and between Kum & Go, L.C. ("Applicant") and the Town of Keenesburg, Colorado, a Colorado municipal corporation ("Keenesburg" or the "Town").

### **RECITALS:**

A. Applicant and Keenesburg have been discussing Applicant's request concerning certain development activities for certain property located within Keenesburg (the "Property").

B. The parties recognize that Applicant's request will place an extraordinary burden on the resources of Keenesburg, and that this Agreement will facilitate Keenesburg's ability to evaluate and process Applicant's request in a timely fashion, and accordingly, the parties recognize that this Agreement will be mutually beneficial.

C. Keenesburg Municipal Code § 17-1-20 requires the full cost of review of each land use application shall be paid by the Applicant.

D. The parties desire to provide for a method by which Applicant will help offset the burden placed on the resources of Keenesburg by Applicant's request.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the parties do hereby stipulate and agree as follows:

1. **Consultant and Other Costs.** Keenesburg has retained, or will retain, the services of certain consultants, including planners, engineers, and attorneys, to assist it in evaluating Applicant's request and to assist it in negotiations; reviews of maps, plans and other documents; drafting of reports, notices and other documents; consultation, and advice. In addition to these consultant costs, Keenesburg also will incur certain other related costs, including but not limited to legal publication costs and administrative costs.

2. **Funds Deposit.** At the time of execution of this Agreement, Applicant agrees to deposit with the Town the sum of \$5,000.00, which is equal to the estimated costs for Applicant's land use request. This deposit, and any additional amounts deposited with the Town pursuant to this Agreement, shall be used to pay the costs provided for in Paragraph 1 above as they become due, in accordance with the Funds Deposit Agreement attached hereto and incorporated herein as Exhibit A. If the deposit is depleted prior to the completion of the review, Applicant shall promptly deposit additional monies with the Town in a mutually agreeable amount. The parties understand and agree that the amount deposited with the Town is an estimate of costs only, and that Applicant shall promptly pay the costs provided for in Paragraph 1 through the initial deposit and additional deposits, if necessary. If such additional monies are not deposited when necessary,

suspension or termination of work on the request may result until such time as the additional monies are deposited. Additional funds shall be deposited as necessary to cover outstanding balances prior to the recording of any approved final documents. Additionally, if a negative balance exists at any time and additional funds are not deposited within 15 days after written notice from the Town, then a five percent (5%) penalty shall be added to such balance and such balance shall bear interest at the rate of one and one-half percent per month. If at any time negotiations on the request terminate, then any monies deposited by Applicant and remaining after payment of the costs incurred by Keenesburg shall be refunded to Applicant.

3. **No Acquired Rights.** Applicant agrees that it does not acquire any rights by virtue of the negotiations or work on the matters contemplated herein, until and unless the Town grants any and all approvals required by law. Any and all negotiations and work concerning the Applicant's request concerning the Property shall be final only upon approval by the appropriate actions of the Board of Trustees of the Town of Keenesburg and other governmental entities having jurisdiction, upon the completion of appropriate actions of Applicant, and upon expiration of any applicable time periods required for finality under law.

4. **Miscellaneous.**

(a) In the event of any litigation arising from this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and court costs.

(b) This Agreement supersedes all prior negotiations between the parties concerning matters addressed herein.

(c) This Agreement shall not be modified except in writing executed by each of the parties.

This Agreement is executed effective this \_\_\_\_ day of \_\_\_\_\_, 2020.

THE TOWN OF KEENESBURG,  
A municipal corporation

By: \_\_\_\_\_  
Kenneth L., Gfeller, Mayor

ATTEST:

\_\_\_\_\_  
Christina Fernandez, Town Clerk

APPLICANT:

Kum & Go, L.C.

By:   
Title: Senior Site Development Manager

STATE OF IOWA )  
COUNTY OF Polk ) SS

The above and foregoing signature of Ryan Halder was subscribed under oath before me this 21<sup>st</sup> day of October, 2020.

Witness my hand and official seal.

Notary Public



My commission expires 9-3-2021.





## EXHIBIT A

### FUNDS DEPOSIT AGREEMENT

A. The undersigned Applicant and the Town of Keenesburg hereby deposit with Keenesburg the following, which is to be held and disbursed by Keenesburg subject to the terms and conditions hereof:

Check written upon the account of Applicant, in the amount of \$5,000.00, payable to the "Town of Keenesburg," and such additional funds as may be deposited subsequently (all such funds are referred to herein as the "deposited funds").

B. The deposited funds shall be subject to the following instructions:

1. Keenesburg shall place the deposited funds in its bank and shall designate a separate account to segregate such funds, subject to the terms and requirements of these instructions.

2. Upon Keenesburg's receipt of a billing authorized pursuant to the "Cost Agreement" between Applicant and Keenesburg, Keenesburg shall promptly submit a copy thereof to Applicant. Backup documentation for each billing shall be furnished to Applicant upon request. Upon approval of the billing by Applicant, Keenesburg shall disburse moneys, from the deposited funds, in payment of such billing. The Applicant's failure to respond to the billing within 15 days after the date the billing is submitted to the Applicant by the Town shall constitute approval to make the disbursement.

3. Any amounts remaining in the deposited funds following completion or termination of the work shall be returned to the Applicant, and all parties shall be relieved from any further liability with regard to this Agreement.

4. This Agreement may be altered, amended, modified or revoked only in writing signed by all parties hereto. The Town agrees to hold the deposited funds described above under the specific terms and conditions of this Agreement.

5. This Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

6. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

WHEREFORE, this Funds Deposit Agreement is executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

APPLICANT:

Kum & Go, L.C.

By: 

Title: Senior Site Development Manager

STATE OF ~~COLORADO~~ <sup>Iowa</sup> )  
COUNTY OF Polk ) ss

The above and foregoing signature of Ryan Halder was subscribed under oath before me this 21<sup>st</sup> day of October, 2020.

Witness my hand and official seal.

Notary Public



My commission expires 9-3-2021.



THE TOWN OF KEENESBURG,  
A municipal corporation

By: \_\_\_\_\_  
Kenneth L. Gfeller, Mayor

ATTEST:

\_\_\_\_\_  
Christina Fernandez, Town Clerk