

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
A LICENSE AND INDEMNITY AGREEMENT FOR THE INSTALLATION AND
MAINTENANCE OF ELECTRIC VEHICLE CHARGING STATIONS IN THE GISELLA
WAY RIGHT-OF-WAY ADJACENT TO THE BASALT REGIONAL LIBRARY, 14
MIDLAND AVENUE, BASALT, COLORADO**

**Ordinance No. 19
Series of 2019**

RECITALS

1. Basalt Regional Library District (“Applicant”), submitted a request in August of 2019, for a License and Indemnity Agreement to install three (3) electric vehicle charging stations in the Gisella Way Right-of-Way adjacent to the Basalt Regional Library at 14 Midland Avenue.

2. The Town of Basalt (“Town”), acting by and through its Town Council (“Town Council”), has the power to grant approval of a License Agreement to permit use of the Town’s right-of-way by an individual property owner.

3. At a public meeting on September 10, 2019, the Basalt Town Council approved this ordinance on first reading and scheduled second reading for September 24 2019, at meeting beginning no earlier than 6:00 PM at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado. Throughout the meeting, evidence and testimony was offered by the Applicant, Staff and members of the public.

4. At a public meeting on September 24, 2019, the Town Council heard evidence and testimony from the Applicant, Town Staff, and members of the public.

5. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Basalt Town Council of Basalt, Colorado, as follows:

1. The Basalt Regional Library License and Indemnity Agreement attached hereto as **Exhibit A** is hereby approved and the Mayor of the Town of Basalt is hereby authorized to execute the License and Indemnity Agreement on behalf of the Town.

2. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant and the owners of the Property.

3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

4. This Ordinance shall be effective 14 days after final publication of the Ordinance in accordance with the Town Home Rule Charter.

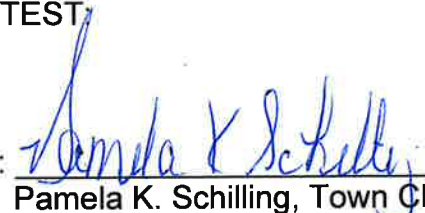
READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR SECOND READING TO BE HELD ON September 24, 2019 by a vote of 6 to 0 on September 10, 2019.

READ ON SECOND READING AND ADOPTED, by a vote of 6 to 0 on September 24, 2019.

TOWN OF BASALT, COLORADO

By: 
Jacques R. Whitsitt, Mayor

ATTEST:

By: 
Pamela K. Schilling, Town Clerk



Ord19-LibraryLicenseAgreement

First Publication: Thursday, September 19, 2019
Final Publication: Thursday, October 3, 2019
Effective date: Thursday, October 17, 2019

Exhibit "A"

LICENSE AND INDEMNITY AGREEMENT FOR LICENSEE IMPROVEMENTS RELATED TO INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS IN THE GISELLA WAY RIGHT-OF-WAY ADJACENT TO THE BASALT REGIONAL LIBRARY

This LICENSE AND INDEMNITY AGREEMENT ("**Agreement**") is made effective as of _____, 2019 (the "**Effective Date**"), between the Basalt Regional Library District ("**Licensee**"), and the Town of Basalt Colorado, a home rule municipal corporation ("**Town**").

RECITALS

- A. The Town owns certain rights of way in the vicinity of the Basalt Regional Library, including the property known as the Gisella Way Right-of-Way (the "**Town Property**").
- B. Basalt Regional Library District (Licensee), as owners of the Basalt Regional Library at 14 Midland Avenue, wish to install three (3) electric vehicle charging stations that the Licensee would be responsible for maintaining in the Town's Gisella Way Right-of-Way as shown on **Exhibit A**.
- C. As a condition to issuing the License Agreement, the Town requires that the Licensee indemnify and hold harmless the Town from certain costs, expenses, damages or liabilities associated with Licensee performing work on the Town Property under the License Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are incorporated by reference herein.
2. Grant of Revocable License/Conditions of Use. The Town hereby grants Licensee a revocable license to encroach and occupy the portion of the Town Property shown on Exhibit A. This grant of a revocable license is expressly limited to and for the sole purpose of the encroachment of the Licensee's electric vehicle charging stations and associated infrastructure on the Town Property. The Town is granting this revocable license as an accommodation and without monetary consideration. Licensee shall be responsible for all improvements and other items located in the Town Property. Licensee hereby acknowledges the title of the Town to the Town Property and agrees never to resist or deny such title. Any and all use of the Town Property by Licensee under this License is permissive and not adverse to the interest of the Town. The license granted herein shall be revocable at the Town's sole discretion at any time.

3. Indemnification. Licensee agrees to forever indemnify, defend, and hold harmless the Town, its managers, agents, and employees, against any and all claims, liabilities, or demands whatsoever relating to or arising out of the use of the Town Property or arising out of or related to this Agreement. Licensee shall be solely responsible to defend any such action, proceeding, or claim for which the Town may be entitled to indemnification, and the Town hereby agrees to fully cooperate with Licensee in the defense or settlement, as the case may be, of such action, proceeding or claim, but the Town reserves the right to participate in the defense of any such action, proceeding or claim at its own expense. Licensee shall give written notice to the Town within ten (10) days after Licensee's actual knowledge of any matter giving rise to the obligation contained in this paragraph.

4. Maintenance and Repair. Licensee shall be responsible for and pay all costs associated with installing the electric vehicle charging stations and conducting all maintenance and repair to the electric vehicle charging stations in the Right-of-Way. The Town shall make every reasonable effort to minimize disturbance to the electric vehicle charging stations in the instance where the Town needs to make improvements or do repairs to the improvements in the Town's Right-of-Way.

5. Charges for Electricity. The Licensee shall have the three (3) charging stations separately metered and shall be responsible for all electrical fees. The Licensee may charge for use of electrical charging stations at a fee approved by Holy Cross as reasonable to recover electrical costs.

6. Permits and Signage. The Licensee shall obtain all necessary permits from the Town prior to installing the electric vehicle charging stations. All signage associated with the charging stations shall require approval by the Town.

7. Termination. All the provisions of this Agreement, including the benefits and burdens created thereby, shall run with the land. This Agreement is made subject to any existing easements, reservations, restrictions or rights of way. The license granted herein shall be revocable at the Town's sole discretion at any time. Additionally, if no charging stations are installed within three (3) years of the execution date of this agreement, this agreement shall be null and void.

8. Notice of Default, Right to Cure. In the event of any default under the provisions of this Agreement, the non-defaulting party shall, prior to the exercise of any right or remedy given the party alleged to be in default, provide written notice of such default together with right for a period of ten (10) days after receipt of such notice to cure said default. If an alleged default by its nature is not capable of being cured within the time provided, the party alleged to be in default shall, provided such party is proceeding with all due diligence, have up to an additional twenty (20) days to cure said default. If a default is not cured within the time provided or any extension thereof (which right to cure period shall not under any circumstances exceed in the aggregate thirty (30) days), the non-defaulting party shall then and thereafter be free to pursue any right

or remedy allowed by this Agreement or otherwise by law.

9. Remedies. The parties hereto shall have the right and power to bring suit in their own name for any legal or equitable relief due to lack of compliance with any provisions of this Agreement. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Agreement, the court shall award to the prevailing party the reimbursement of its costs and expenses, including reasonable attorney fees, in connection therewith and in any subsequent suit to enforce a judgment.

10. No Waiver. The failure of either party to insist upon the strict performance of any provisions of this Agreement or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provision.

11. Miscellaneous. This Agreement may be executed in one or more counterparts and on separate counterparts; such counterparts will be compiled into one fully-executed Agreement. A signature delivered by e-mail, facsimile or other electronic transmission will be deemed to constitute an original and fully-effective signature. This Agreement contains the entire agreement among the parties and supersedes any prior agreements or understandings (written or oral) with respect to the matters set forth herein. This Agreement may not be amended, nor may any rights hereunder be waived, except by an instrument in writing executed by the parties against whom such waiver or modification is sought to be enforced.

The use of the term "person" should be broadly interpreted to include any corporation, company, partnership, other entity or individual. The terms "include," "including" and similar terms shall be construed as if followed by the phrase "without being limited to." The term "or" has the inclusive meaning represented by the phrase "and/or" (except where otherwise indicated). The words "hereof," "herein," "hereby," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision or section of this Agreement. No inference in favor of, or against, any party shall be drawn from the fact that such party has drafted any portion of this Agreement.

10. Colorado Law. The interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado. Any litigation involving this Agreement or its subject matter shall be brought and maintained in the District Courts located in Eagle County, Colorado. Each party hereby waives all rights to trial by jury.

11. Binding Effect; Recording; Survival. All provisions of this Agreement inure to the benefit of and are binding upon the parties hereto, their heirs, successors, assigns and personal representatives.

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the Effective Date.

LICENSEE:
Basalt Regional Library District

TOWN:

By: Jacque R. Whitsitt, Mayor

ATTEST:

Town Clerk

STATE OF _____)
) ss.
COUNTY OF _____)

I, _____, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT _____, in his capacity as chair of the Basalt Regional Library District, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this ____ day of _____, 2019.

My Commission Expires: _____

Notary Public

Exhibit A
Map Showing Location of Electric Vehicle Charging Stations in Gisella Way ROW

