# Town of Frederick
# Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, April 25, 2023

**7:00 PM**

Livestreaming of the Board of Trustees meetings have been transitioned to the Town of Frederick website. The livestream can be accessed at www.frederickco.gov/civicmedia

Public Comment will only be taken in person unless an accommodation is requested through the Town Clerk's Office. If you require an accommodation or have questions about making public comment please contact the Town Clerk's Office:

Meghan Martinez, Town Clerk
mmartinez@frederickco.gov
720-382-5500

Or

Kelly Green, Deputy Town Clerk
kgreen@frederickco.gov
720-382-5500

**Built on What Matters.**

# Town of Frederick
# Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, April 25, 2023

**6:30 P.M.**
**Work Session**

**7:00 P.M.**

**Regular Meeting**

**Call to Order – Roll Call:**

**Pledge of Allegiance:**

**Approval of Agenda:**

**Special Presentations:**

**Public Comment:** This portion of the agenda is provided to allow members of the audience to provide comments to the Town Board. Please sign in and the Mayor will call you. If your comments or concerns require an action, that item(s) will need to be placed on a later Agenda. Please limit the time of your comments to three (3) minutes.

**Staff Reports:**

A. Administrative Report – Bryan Ostler, Town Manager

B. Clerk Report – Meghan Martinez, Town Clerk

**Consent Agenda:** Consent Agenda items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Consent Agenda.

C. March 14, 2023 Minutes – Meghan Martinez, Town Clerk

D. List of Bills – Kurtis Adams, Finance Director

**Action Agenda:**

E. Resolution 23-R-20 Award a Contract for the 2023 Water Rate Study and Authorizing the Town Manager to Execute the Contract – Sarah Watson, Engineer

F. Resolution 23-R-21 Award a Contract for Creation of a Non-Potable Water Infrastructure Master Plan and Authorizing the Town Manager to Execute the Contract – Sarah Watson, Engineer

G. Resolution 23-R-22 Award a Contract for the Design Contract of the Silver Birch and Bella Rosa Intersection Improvement Project and Authorizing the Town Manager to Execute the Contract – Jason Berg, Engineer

H. Consideration of the Prosperity Subdivision Landscape Waiver – Ali van Deutekom, Planning Manager

I. Consideration of Building Permit Fee Waiver for Frederick Firestone Fire Protection District – Bryan Ostler, Town Manager  Jason Meyers, Town Attorney Ryan Johnson, Assistant Town Manager

**Mayor and Trustee Reports:**

**Executive Session:**

For discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; regarding the Town Clerk Annual Evaluation.

**Adjournment:**

# Town of Frederick

# Memorandum

TO: Honorable Mayor and Board of Trustees

FROM: Bryan Ostler, Town Manager

DATE: April 21, 2023

CC: Town Staff
Local Media

**SUBJECT: Departmental Report**

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Upcoming Board of Trustees Work Sessions – If there are topics that the Board would like staff to schedule for discussion, please let me know. The following topics are scheduled for upcoming meetings. These topics may be changed or rescheduled from time to time.

- April 25, 2023 – Regular Meeting
- May 2, 2023 – Work Session: No Topics Scheduled
- May 9, 2023 – Regular Meeting
- May 16, 2023 – Work Session: FFFPD Update, Strategic Plan Update
- May 23, 2023 – Regular Meeting
- May 30, 2023 – No Meeting

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## Communications and Engagement Department

To inform the Board and Town of Frederick residents of the accomplishments and projects in progress by the Communications and Engagement Team, I am submitting this departmental report covering March 10, through March 23, 2023. This summary is intended to serve as an update related to the Strategic Plan and does not encompass entire outputs or metrics.

*Dynamic, Inclusive & Connected Community 3.1*

- Town Event Preparation
  - Recruitment and Sponsors as of 4/19/2023
  - Sponsor commitments totaling $38,050
  - 15 chainsaw carver applications
  - 41 food truck applications
  - 42 market vendor applications
- Community Partnerships
  - Attend Carbon Valley Event Coordinators meeting
  - Attend Carbon Valley networking monthly meeting
  - Attend FHS Education Foundation monthly meeting
  - Attend Community Task Force meeting – provide photos and drone capture time lapse video of traffic flow
  - Collaborate with FFFPD to inform residents of prescribed burn projects

- Website Updates
    - Create new “Stay Connected with your BOT” web page
    - Establish quarterly website KPI’s and report associated metrics
    - Updates to roadwork webpage
- Town App
    - Silent launch in Apple App Store
    - Create Marketing Plan and Timeline
- Interdepartmental Collaboration
    - Complete intern interviews, final candidate anticipated to start by end of May
    - Collaborate with Finance to recruit and schedule volunteers for Landfill Voucher distribution
    - Collaborate with Leadership Team on news release regarding the Back 9 at Bella Rosa Golf Course
    - Collaborate with GIS and Engineering to get updated maps for Town website
    - Create Summer Youth Academy Flyer
- Board Meeting
    - Attendance at Board meetings to ensure Town communications align with Board’s vision and work in progress
    - Town Board Meetings Monthly Report – create sample content and design to recap Boards actions/discussion topics each month.

*Safe and Secure*

- Collaborate with PD to share Officer involved shooting District Attorney Decision Letter with community. Establish notification protocol with involved agencies for requests.
- Continue to work with Weld County dispatch to establish remote access to CAD data through newly installed Crystal Report writer.

*Community Economic Vitality*

- Create Economic Development Annual Report
- Collaborate with Economic Development on news release for new business relocating to Frederick
- Collaborate with Paramount Remodeling to highlight their work on HGTV and promote Frederick business successes.

**<u>Public Works</u>**

- Streets and Stormwater:
    - Street sweeping schedule for 2023 began 4/3/23 which began in downtown, Parkview, Maple Ridge, Coal Ridge, Countryside, Westview, Savannah, Angel View, Clark Ranch, and Carriage Hills.
    - Finished replacing all street signs, stop signs, and posts in Eagle Valley.
    - Fixed and replaced No Parking signs in Glacier and added updated truck weight limit signs on Aggregate Boulevard.
    - Added signs to assist with high school traffic flow from parking lot, fixed and repaired street signs in Carriage Hills Subdivision
    - Graded CR 16 and CR 14
    - Filled in multiple potholes around town and in residential areas and along arterial roads
    - Public Works team members participated in Touch a Truck event at Crist Park on 3/31/23
    - Cleaned and cleared roadside debris in all the industrial areas around town
    - Repaired and did maintenance on wind chimes sculptures along Colorado blvd trail
    - Crack sealed all parking lots and town maintained areas including Bella Rosa Golf Course
    - Cutback trees blocking street signs or interfering with street sweepers routes
    - Continuous cleaning and clearing inlets completing downtown and Savannah neighborhoods

    - Cleaned out Colorado Blvd. trickle channel
    - Continuous storm water GIS mapping
- Water:
    - 114 Locates completed
    - 21 final reads completed
    - Meter installs: 10 Clark Villas, 2 Hidden Creek, 2 Silverstone
    - Meter replacements: 2 Eagle Valley, 1 Fox Run, 4 Moore Farms, and 1 Old Town
    - Digitizes meter for GIS in Old Town: Tipple Pkwy, 2nd, 3rd, 4th, 5th, 6th, and 7th
    - Isiah Fernandez new water maintenance tech start 4/10/23 and completed flagger certification
- Facilities:
    - Completed 28 work orders, 3 immediate need/emergency, 6 calls for repair/maintenance, 8 tasks, 11 scheduled/preventative
- Fleet Services
    - 6 Service Requests
- Training
    - Active Shooter Safety Webinar
    - Monthly Safety Meeting

**<u>Frederick Police Department:</u>**

- The Police Department held a Sergeant promotional process to backfill a Sergeant vacancy. This process was extremely competitive and both applicants did extremely well. Please us in congratulating our newly promoted Sergeant, Sergeant Ian Austin. Sergeant Austin's role will take effect starting the first week of May. In this testing process, a six month eligibility list was created and Officer Sara Flunker was award an eligibility spot on that list for any future Sergeant openings.
- Commander Glantz attended the Colorado Association of Chiefs of Police mid-year conference and Executive Leadership training March 7th through March 10th. Topics included within the training included the importance of mental health and peer support, managing high risk policy and procedures, CORA and CORA updates, recruitment and retention, leadership models for upper level management, media relations, mental health and early warning systems, L.E. Executives and their relationship with city manager and governing boards, legislative updates, and updates on senate and house bills from Colorado Attorney General Phil Wieser. Commander Glantz will be taking the information learned from this training and applying any necessary updates to PD policies, programs, and training.

**<u>Finance Department</u>**

- Audit: The Finance team spent the last two weeks focused on the FY2022 audit fieldwork with our partner CPA firm, John Cutler and Associates. Once concluded we will begin assembly of the related Annual Comprehensive Financial Report.

**<u>Planning Division:</u>**

- *Development Applications* – The development review process has a few steps land use applications go through prior to submitting an application such as a pre-application meeting and neighborhood meeting. There are seven projects that have completed the pre-application step. There are currently two neighborhood meetings scheduled. Zero projects have completed the neighborhood meeting, allowing them to submit an application. The following applications have been accepted for review and are now quasi-judicial.

| ***New Applications Project Name (Date of Application)*** | ***Subdivision*** | ***General Location*** | ***Brief Description*** |
|---|---|---|---|
| | | | |
| ***On Going Projects Project Name (Date of Application)*** | ***Subdivision*** | ***General Location*** | ***Brief Description*** |
| Bear Industrial Park Block 2, Lot 4 (6/20/2022) | Bear Industrial Park | 4201 Kodiak Ct | Proposed 7,506 Sq Ft 1 story building for light industrial. |
| Bear Industrial Park Replat 1 Block 2 Lot 2 (1/3/2023) | Bear Industrial Park | 4180 Busch Place | Proposed installation of low voltage security fence. |
| Bear Industrial Park Replat 3 Block 1 Lot 8 | Bear Industrial Park | 4210 Bruin | Proposed building for excavation company with outdoor storage |
| Brunemeier Annexation-Wheatlands (4/4/2022) | | Southwest corner of County Road 16 and County Road 17 | Proposed single family attached and detached homes. |
| Carriage Hills Filing 1 Replat A (3/6/2023) | Carriage Hills | North of Hwy 52 and West of Fredrick Way | Review of design for 11th Street |
| Eagle Business Park Agilent (2/07/2022) | Eagle Business Park | 7400 Eagle | Site Plan for Agilent's expansion |
| File 32H-K268 Pad | | 6268 County Road 3 1/4 | Propose to drill thirty-five (35) horizontal wells. |
| Glacier West Business Park Filing 2 Replat B Lot 9B | Glacier West | 3470 Highway 52 | Proposed 2 story building with office space on the top floor and 6 bay carwash on lower floor. |
| Hidden Creek Amendment 5 Replat (8/15/2022) | Hidden Creek | North of Tipple Parkway and East of Ridgeway Blvd | Proposed relocating lots and revising lot sizes from the final plat. |
| Meadowlark Business Park Filing 3 Block 1 Lots 4-6 (3/20/2023) | Meadowlark | 5571 Iris Parkway | Remove joining lot lines and site plan proposal for core and shell building with outdoor storage. |
| Miner Park Town Center (4/3/2023) | | Miners Park Town Center | Propose to vacate existing right of way, rezone property |
| Nelson Farms (1/3/2022) | | Southwest corner of Silver Birch Blvd and Tipple Blvd | Proposed residential development on 236 acres |
| Park 4040 Replat B Lot 2 (12/19/2022) | | 9200 E. I-25 Frontage Road | Proposed 55,000 sq ft. flex warehouse for future unknown tenant |
| ***Project Name (Date of Application)*** | ***Subdivision*** | ***General Location*** | ***Brief Description*** |

| | | | |
|---|---|---|---|
| Penrose Sketch Plan (9/2/2022) | Penrose | Northeast corner of Ridgeway Blvd and Highway 52 | Requesting a change in landscaping requirements for water usage. |
| Prosperity Waiver (8/18/2022) | Prosperity | South of Tipple Parkway and East of Angel View and North of Savannah | Proposed landscaping changes. |
| Raspberry Hill Business Park Lot 1 (11/7/2022) | Raspberry Hill Business Park | Southeast corner of I025 Frontage Road and Raspberry Way | Proposing exterior renovations to existing building |
| Raspberry Hill Business Park Lot 13 (5/2/2022) | Raspberry Hill Business Park | 8274 Raspberry Way | Proposed office building and sales of pickup trucks. |
| Raspberry Hill Business Park Lots 4&5 (8/15/2022) | Raspberry Hill Business Park | 8177 Raspberry Drive | Propose to combine lots for car dealership. |
| Raspberry Hill Business Park Lots 12 (8/15/2022) | Raspberry Hill Business Park | 8177 Raspberry Drive | Proposed outdoor vehicle inventory storage lot. |
| Shores On Plum Creek (6/20/2022) | Shores On Plum Creek | North of Highway 52 and east and west of County Road 3.25 | Proposed residential and commercial development. |
| Silverstone Filing 7 (1/18/2021) | Silverstone | North of Highway 52 and south of Tipple Parkway | Proposed Development of 581 residential homes. |
| Silverstone Marketplace (3/6/2023) | Silverstone | Northwest corner of Colorado Blvd and Highway 52 | Proposed development of 34 acres into commercial, including a grocery store and smaller commercial/retail sites |
| Wyndham Hill Filing 10 Final Plat and Final Development Plan (11/16/2020) | Wyndham Hill | Generally west of WCR7, between WCR 14.5 and WCR 16. | Approximately 139 acres to be developed into 495 Single family homes. |

Town of Frederick

# Memorandum

TO: Honorable Mayor Tracie Crites and Board of Trustees

FROM: Meghan Martinez, Town Clerk

DATE: April 21, 2023

**SUBJECT: Town Clerk's Report**

- *Boards, Commissions and Committees*
  - <u>*Scholarship Committee*</u>: The committee has recommended three scholarship awards this year. I have scheduled the award and reception for May 9th Board Meeting.
  - <u>*Youth Commission:*</u> A draft of the youth commission application will be provided to Trustees Padia and Brown for feedback the week of April 22, 2023.
- *Boards, Commissions, Committees Recruitment*
  - Coordinated with Trustees Padia and Brown on scheduling interviews for candidates for placement on Boards, Commissions, and Committees. We will have another round of interviews on Wednesday, April 26, 2023.
- *Records Requests*
  - The Clerk's Office has responded to 9 Requests for Public Records since the March 28th Board meeting.
- *Recruitment*
  - The Assistant Municipal Clerk – Municipal Court position has been posted and will close on April 28th.
- *School Tours*
  - We will be hosting Legacy Elementary School for their annual school tour on Thursday, April 27, 2023 from 9:30 – 12:00. Students will visit the Fire Station, Police Department, Museum, Town Hall, and participate in the Public Works Touch a Truck.
- *Frederick Municipal Court*
  - Finalizing implementation schedule for new court software. Training to begin next month.
  - March Municipal Court Numbers:

- Early Pay – 31
- Traffic – 27
- Criminal – 3
- Review – 6
- Total Attending Court – 36
- Total March Cases - 67

- *Liquor Licensing:*

Current Liquor Licenses

| *Licensee* | *Expiration Date* | *Status* |
|---|---|---|
| Back 9 at Bella Rosa | 9/3/2023 | Approved |
| Glacier Liquors | 9/4/2023 | Approved |
| Rock Solid | 10/18/2023 | Approved |
| Peel Pizzeria | 11/2/2023 | Approved |
| Mirror Image Brewing Company | 11/4/2023 | Approved |
| Mountain Cowboy Brewing Company | 11/5/2023 | Approved |
| Circle K Store 2706787 | 11/12/2023 | Approved |
| 7-Eleven Store 38638A | 12/25/2023 | Approved |
| Georgia Boys Smokehouse | 1/24/2024 | Approved |
| Frederick Liquor and Store | 2/21/2024 | Approved |
| Pete’s Place | 3/9/2024 | Approved |
| 7-Eleven Store 35269B | 3/21/2024 | Approved |
| WTF! | 6/5/2023 | Pending |
| Frederick Travel Center | 6/30/2023 | Approved |
| Gabe’s Cafe | 9/27/2023 | Approved |

Enforcement Issues

No current enforcement issues.

# Town of Frederick Board of Trustees

Regular Board Meeting Minutes
Frederick Town Hall, 401 Locust Street
March 14, 2023

**Call to Order:** At 7:00 pm Mayor Crites called the meeting to order and requested roll call.

**Roll Call:** Present were Mayor Crites, Mayor Pro Tem March, Trustee Lamach, Trustee teVelde, Trustee Brown, Trustee Padia, and Trustee Mahan. Also Present were Town Manager Bryan Ostler, Town Attorney Jason Meyers, and Town Clerk Meghan Martinez

**Pledge of Allegiance:**

**Approval of Agenda:**

Town Clerk Martinez asked that the Board consider an amended February 28, 2023 Minutes.

**Special Presentations:**

Carbon Valley ½ Marathon: Mike Sindelar and Monica Vickers presented the funding request. Motion by Mayor Pro Tem March and seconded by Trustee teVelde to approve $1800. Upon roll call vote, motion passed unanimously.

**Public Comment:**

Gil and Shirl Garcia asked about adding a dog park in the green belt between Raspberry Hill and Eagle Valley. Shirl also mentioned shoveling for seniors and the King Soopers project. She also mentioned the Senior Resource Fair on 5/4 at the Recreation Center from 9-1.

**Staff Reports:**

Administrative Report: Town Manager Bryan Ostler provided a written report.

Clerk's Report: Town Clerk Meghan Martinez provided a written report.

**Consent Agenda:**

Motion by Mayor Pro Tem March and seconded by Trustee Mahan to approve the consent agenda which contained the following items:

- February 28, 2023 Minutes
- List of Bills
- Ratifying the Designation of the Town of Frederick Future Land Use Map as the Three-Mile Plan
- Resolution 23-R-11 To Award a Contract for the 2023 Concrete and Alleyway Maintenance Program and Authorizing the Town Manager to Execute the Contract
- Resolution 23-R-12 To Award a Contract for 2023 Seal Project-Pavement Maintenance Program and Authorizing the Town Manager to Execute the Contract

Upon roll call vote, motion passed unanimously.

**Action Agenda:**

Resolution 23-R-13 To Award a Contract for 2023 Pavement Maintenance Program and Authorizing the Town Manager to Execute the Contract: Engineer Jason Berg presented the proposed resolution. Motion by Mayor Pro Tem March and seconded by Trustee Brown to approve Resolution 23-R-13. Upon roll call vote, motion passed unanimously.

Resolution 23-R-14 Approving Support for a Grant Application and Related Contracts for Conducting a Target Industry Cluster Study: Economic Development Manager Max Daffron and Grant Administrator Traci Garcia-Castells presented the proposed grant applications. Motion by Mayor Pro Tem March and seconded by Trustee Lamach to approve Resolution 23-R-14. Upon roll call vote, motion passed unanimously.

Consideration of the Bear Industrial Park Replat 1, Block 2, Lot 2 (Cruise America Rental and Sales) Electric Fence Waiver Request and Fence Height Variance Request: Planner Audem Gonzales presented the waiver request. The applicant was present and addressed the Board. In addition, Roger Wingerberg and Chris McGee also addressed the Board.

Motion by Trustee Padia and seconded by Mayor Pro Tem March to deny the Bear Industrial Park Replat 1, Block 2, Lot 2 Electric Fence Waiver, case no. 2023-01. Upon roll call vote, motion passed unanimously.

There was no action on the Variance request since the Waiver was denied.

**Mayor and Trustee Reports:**

Trustee teVelde: It's great to be back in person.

Mayor Crites: She requested the Town Manager give an update on the Rowe Street issue. She would like to see us institute a proper protocol for recess time.

**Executive Session:** Motion by Trustee Brown and seconded by Trustee Mahan to go into executive session for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e)(1) regarding Miners Park. Upon roll call vote, motion passed unanimously.

At 8:49 Mayor Crites recessed the meeting to go into executive session.

At 10:21 Mayor Crites reconvened the meeting.

**Adjournment:**

There being no further business of the Board. Mayor Crites adjourned the meeting at 10:21 pm.

Approved by the Board of Trustees:

ATTEST:

Tracie Crites, Mayor

Meghan Martinez, Town Clerk

# Town of Frederick - List of Bills
## February 24, 2023 - March 30, 2023

| | | |
|---|---|---|
| 1800DRYCLEAN NORTH METRO DENVER | Uniform cleaning services | 477.03 |
| 206 5TH STREET | 2022 Tax Increment Reimbursement - FURA | 12,307.59 |
| 4 RIVERS EQUIPMENT LLC | Mower maintenance supplies | 541.25 |
| 5STARWASHCV LLC | Vehicle maintenance | 741.51 |
| AAA PEST PROS LLC | Pest control | 210.00 |
| ACE HARDWARE OF FIRESTONE | Supplies | 795.66 |
| ACUSHNET COMPANY | Golf shop merchandise | 4,027.21 |
| ADAMSON POLICE PRODUCTS | Police uniforms | 364.31 |
| ADIDAS AMERICA INC | Golf shop merchandise | 186.28 |
| AFTERMATH SERVICES LLC | Bio-Hazardous cleaning supplies | 300.00 |
| AGFINITY | Fuel | 21,690.99 |
| AH ARCHITECTURE PC | Architectural services | 3,530.80 |
| ALAN ISAAC | Boot reimbursement | 100.00 |
| ALL PHASE LANDSCAPE | Hydrant Meter Deposit refund | 2,200.00 |
| AMERICAN LEAK DETECTION | Cause and origin | 350.00 |
| ANTHONY FOUNTAIN | Reimbursement for training expenses | 106.69 |
| AVI PC | Colorado Blvd & Bella Rosa Drainage Projects | 33,008.85 |
| BASE LINE LAND & RESERVOIR COMPANY | Stock assessment | 133.25 |
| BERG TOOLS LLC | Tool allowance | 138.00 |
| BERMUDA SANDS APPAREL LLC | Staff uniforms & shop merchandise | 2,540.00 |
| BETTER BUSINESS CLEANING | Monthly cleaning service | 5,102.00 |
| BLACK HILLS ENERGY | Gas utility | 9,204.22 |
| BREAKTHRU BEVERAGE COLORADO | Beverage order for restaurant | 280.99 |
| BUFFALO BRAND SEED LLC | Seed for golf course | 7,130.00 |
| BUILDING WARRIORS INC | Peer support | 250.00 |
| CALLAWAY GOLF | Golf shop merchandise | 457.79 |
| CAPITAL BUSINESS SYSTEMS INC | Town copier lease | 1,470.61 |
| CARBON VALLEY CHAMBER OF COMM. | Annual Membership & Awards Dinner | 3,000.00 |
| CARD AND FORM SOLUTIONS INC | Thermal paper | 129.07 |
| CARD SERVICES | Travel, training and supplies | 26,667.39 |
| CARTEGRAPH | Implementation milestone | 7,800.00 |
| CASRO | Regional School Safety Conference | 1,078.88 |
| CENTURA HEALTH | Blood test, exam and evidence collection | 626.56 |
| CES (Colorado Accounts - SW) | Electrical parts | 35.68 |
| CINDY KAMIGAKI | ESRI( GIS) Conference Flight reimbursement | 500.96 |
| CINTAS CORPORATION | Mat service and uniforms | 791.70 |
| COBRA PUMA GOLF | Merchandise for golf shop | 1,761.00 |
| COLORADO ASPHALT SERVICES LLC | Street repairs | 4,020.00 |
| COLORADO WATERWISE | Membership renewal | 1,000.00 |
| COMCAST CABLE | Cable and internet service | 1,414.82 |
| COMCAST PHONE | Town wide internet service | 2,655.00 |
| COREN PRINTING INC | Form printing | 238.87 |
| CORKAT DATA SOLUTIONS LLC | IT support, computer equipment & licensing | 51,180.99 |
| COSTAR REALTY INFORMATION INC | Monthly subscription | 1,093.21 |
| D & S STEEL BUILDINGS CO | Hydrant Meter Deposit refund | 2,200.00 |
| DANA KEPNER CO | Meter supplies, Software & support | 11,801.90 |
| DERRICK SCHMIDT | Boot reimbursement | 100.00 |
| DNI HEATING AC REFRIGERATION | Repair for roof duct leak | 629.23 |
| ELDORADO ARTESIAN SPRINGS INC | Water delivery service | 164.50 |
| ELEMENT WATER CONSULTING INC | Water Engineering Services | 45,242.50 |
| ELEVATED CLOUD SERVICES LLC | Hosting - ESRI & GIS | 575.00 |
| ELITE HOOD CLEANING & FIRE PROTECTION CO | Hood cleaning & fire suppression | 351.00 |
| ENERGAGE LLC | Energage Insights- Annual Insights Subscription | 4,495.00 |
| ENTERPRISE FM TRUST | Vehicle lease program | 77,958.24 |
| ERIC SHELEY | Reimbursement for training expenses | 191.65 |
| FACTORY MOTOR PARTS CO | Shop supplies | 1,115.01 |

Town of Frederick - List of Bills
February 24, 2023 - March 30, 2023

| | | |
|---|---|---|
| FAIRFIELD AND WOODS PC | Legal services | 6,446.00 |
| FASTENAL COMPANY | Maintenance shop supplies | 1,043.45 |
| FORSGREN ASSOCIATES INC | Potable Water Infrastructure Master Plan | 17,423.75 |
| FREDERICK HIGH SCHOOL BOOSTER CLUB | Senior Sunset Parade Donation | 2,400.00 |
| FREEDOM MAILING SERVICES LLC | Utility statement printing and mailing | 3,225.84 |
| G & G EQUIPMENT INC | Equipment repair parts | 34.15 |
| GENERAL AIR | Shop supplies | 19.71 |
| GERALD ARMSTRONG | Police Equipment Loan Program | 1,500.00 |
| GREEN MILL SPORTMAN'S CLUB | Range use | 300.00 |
| GREEN MOUNTAIN PROMOTIONS | Logo items | 1,505.34 |
| HACH COMPANY | Supplies | 127.98 |
| HAMILTON LINEN | Linen service for restaurant | 256.99 |
| HARDLINE EQUIPMENT | Sweeper maintenance & supplies | 8,494.85 |
| HIGH COUNTRY BEVERAGE | Beverage order for restaurant | 275.25 |
| HOME DEPOT CREDIT SERVICES | Supplies | 1,762.38 |
| HUSKY SIGNS & GRAPHICS INC | Vehicle graphic design and installation | 3,554.14 |
| IAN AUSTIN | Reimbursement for K-9 supplies | 1,576.37 |
| IDENTIFIX INC | Online Vehicle Service data subscription | 1,428.00 |
| IMAGEFIRST HOSPITALITY | Linen service for restaurant | 437.09 |
| INFOSEND INC | Postage deposit | 3,640.00 |
| INTERSTATE RENTAL & SALES, INC. | Equipment rental | 195.00 |
| JAIME BROWER PSYCHOLOGICAL SVCS & CONSULTING | Counseling services | 150.00 |
| JC GOLF ACCESSORIES | Golf shop merchandise | 2,380.16 |
| JOHN OBER | Tool allowance & boot reimbursement | 199.59 |
| KAISER PREMIER LLC | Excavator balance & Vac truck maintenance | 10,858.74 |
| KEVIN WOLFE | Reimbursement for training expenses | 116.03 |
| KINSCO LLC | Police uniforms | 139.99 |
| KP & ASSOCIATES | Retail Consulting Services | 2,400.00 |
| KYLE A RICHARDS | BOT meeting recording | 150.00 |
| LANGUAGE LINE SERVICES | Interpreting services | 18.86 |
| LEFT HAND WATER DISTRICT | Rinn Valley irrigation | 75.38 |
| LONGMONT HUMANE SOCIETY | Animal impound fees | 1,052.25 |
| LUMIN8 TRANSPORTATION TECHNOLOGIES LLC | Monthly maintenance fee | 236.25 |
| MARINI DIESEL INC | Maintenance supplies | 185.68 |
| MARONEY CONSULTING SERVICES LLC | Alcohol beverage vendor training | 450.00 |
| MARSH LAW PC | Legal services | 1,493.90 |
| MASEK GOLF CAR COMPANY | Parts for equipment repair | 78.83 |
| MATTHEW BENDER & CO INC | Colorado Stats rules 2023 | 126.43 |
| MATTHEW MYERS | Reimbursement for training expenses | 65.00 |
| MAX DAFFRON | Reimbursement for travel expenses | 43.75 |
| MIRROR IMAGE BREWING COMPANY | Beverage order for restaurant | 120.00 |
| MITEL | Phone service for town buildings | 3,678.64 |
| MOSES WITTEMYER HARRISON & WOODRUFF PC | Legal services | 57,399.00 |
| MOTOROLA SOLUTIONS INC | Radio batteries | 130.89 |
| NEW CONSOLIDATED LOWER BOULDER RESERVOIR | Capital Stock Assessments Common/Preferred | 19,329.79 |
| NITV FEDERAL SERVICES LLC | CVSA training | 2,790.00 |
| NORMA VERONICA PELAYES | Interpreting services | 150.00 |
| NORRIS DESIGN INC | Downtown parking lot park | 685.00 |
| NORTHERN CO. WATER CONSERVANCY DISTRICT | Windy Gap, Assessments & Class B Allottee | 14,988.62 |
| NORTHERN ENGINEERING SERVICES | Parkview Estates Lot 5 Block 3 | 2,600.00 |
| NORTHSIDE TOWING LLC | Towing services | 300.00 |
| OCCUPATIONAL HEALTH CENTERS | Pre-Employment drug screening | 221.00 |
| O'KEEFE PUBLISHING INC | Divot magazine promotion | 300.00 |
| O'REILLY AUTOMOTIVE INC | Maintenance supplies | 37.54 |
| P & W GOLF SUPPLY LLC | Equipment supplies | 656.66 |
| PAUL C BENEDETTI | Legal Services- FURA | 2,550.00 |

| | | |
|---|---|---|
| PAUL SHINE | Reimbursement for radio equipment | 32.95 |
| PEAK PERFORMANCE IMAGING SOLUTIONS | Laserfiche Municipality Site License | 15,450.00 |
| POLICE AND SHERIFFS PRESS INC | Photo IDs | 21.60 |
| POTESTIO BROTHERS EQUIPMENT INC | Service repairs | 1,326.57 |
| PRAIRIE MOUNTAIN MEDIA | Publishing costs | 202.13 |
| PRE ACTION FIRE INC | Quarterly monitoring & fire alarm replacement | 1,085.00 |
| PRINT EXPERTS | Employment brochures & flyers | 787.84 |
| PRO GOLF REPAIR LLC | Pro Golf services | 165.00 |
| PROFORCE LAW ENFORCEMENT | Police equipment | 7,917.00 |
| QUALIFICATION TARGETS INC | Target supplies | 217.22 |
| R & R PRODUCTS | Parts for equipment maintenance & repair | 661.11 |
| RAMEY ENVIRONMENTAL COMPLIANCE | ORC Services Water Distribution System | 216.00 |
| REDI SERVICES LLC | Porta john service | 395.00 |
| REDNECK TRAILER SUPPLIES | Trailer maintenance supplies | 132.23 |
| ROCKY MOUNTAIN INTEGRATORS INC | Security system door install - Stairwell & lobby | 3,285.00 |
| SAFEWAY | Gift card and supplies | 401.04 |
| SAM'S CLUB / GECRB | Supplies | 764.24 |
| SCORR SOLUTONS | Quarterly rectifier inspection | 100.17 |
| SEALMASTER | Equipment - Graco linelazer | 6,762.00 |
| SETCOM CORPORATION | Wireless headsets | 5,331.83 |
| SHRED VAULT COLORADO LLC | Document shredding | 155.00 |
| SIGMA WELLNESS LLC | Cardiac screening program | 7,384.00 |
| SIGNARAMA | Supplies | 85.00 |
| SMITH ENVIRONMENTAL & ENGINEERING | Frederick GW Impacts Study | 35,201.46 |
| SOUTHERN GLAZERS WINE AND SPIRITS | Beverage order for restaurant | 536.84 |
| SRIXON CLEVELAND GOLF XXIO | Golf shop merchandise | 4,453.30 |
| STANTEC ARCHITECTURE INC | Feasibility Study and Facilities Master Plan | 26,898.03 |
| STAPLES ADVANTAGE | Office supplies | 357.32 |
| STEVE JOHNSON | Tool allowance | 243.44 |
| STREET COP TRAINING LLC | Training | 249.00 |
| SUNBELT RENTALS INC | Equipment rental - trail preservation | 3,064.09 |
| SWIRE COCA-COLA USA | Beverage supplies for restaurant | 289.05 |
| SYSCO DENVER | Restaurant supplies | 3,829.76 |
| TAYLOR MADE GOLF COMPANY | Golf shop merchandise | 719.91 |
| TELOS ONLINE INC | Back up link | 75.00 |
| THE ANTIGUA GROUP INC | Uniforms | 34.25 |
| THE ELITE PIPE MD | Right of Way Deposit refund | 225.00 |
| THE SHERWIN-WILLIAMS CO | Supplies | 136.25 |
| THE SJS OLSON GROUP LLC | Leadership Development Training | 13,622.15 |
| TODD NORRIS | Equipment Loan Program | 2,000.00 |
| TRANSWEST TRUCK | Shop supplies | 109.75 |
| TRIDENT FIRE & SECURITY | Fire extinguisher exchange | 60.00 |
| TYLER TECHNOLOGIES | Incode - MyCivic - Web Hosting fees | 96,788.00 |
| UME CUSTOM EMBROIDERY & IMPRINTING LLC | Logo employee apparel | 1,368.48 |
| UNITED POWER | Electric utility | 7,003.51 |
| UNIVERSITY AUTO PARTS INC | Equipment repair parts and supplies | 138.65 |
| UPPER CASE PRINTING, INK. | Newsletter printing | 1,235.43 |
| US FOODS INC | Restaurant supplies | 7,027.59 |
| USACS COMMUNITY EMERGENCY SERVICES OF COLO | Covid testing | 5,209.59 |
| UTILITY NOTIFICATION CENTER OF COLORADO | Utility locates | 197.37 |
| VERIZON WIRELESS | Cell phone and wireless services | 5,782.79 |
| VIA MOBILITY SERVICES | Transportation | 49,528.00 |
| WASTE CONNECTIONS OF COLO INC | Monthly trash & recycle service | 596.06 |
| WELD COUNTY COURT | Bond transfer | 100.00 |
| WELD COUNTY HEALTH DEPT | Laboratory services | 2,089.50 |
| WEX BANK | Fuel | 2,059.43 |

| | | |
|---|---|---|
| WTC-WICKHAM TRACTOR CO | Parts | 184.46 |
| ZOOM VIDEO COMMUNICATIONS INC | Annual subscription | 5,997.00 |
| | | **868,555.85** |

# TOWN OF FREDERICK
# Board of Trustees
# Action Memorandum



## Consider Awarding a Contract for the 2023 Water Rate Study

**Agenda Date:** Town Board Meeting – April 11, 2023

**Attachments:**
a. 2023 Water Rate Study Contract
b. Scope Document
c. Central Weld County Water District Letters
d. Resolution 23-R-20

**Finance Review:** ______________________________
Finance Director

**Submitted by:** Sarah Watson
Civil Engineer, EI

**Approved for Presentation:** Bryan Ostler
Town Manager

☐ Quasi-Judicial ☐ Legislative ☒ Administrative

**Strategic Plan Alignment:**

Strategic, Reliable & Sustainable Infrastructure: Frederick is dedicated to investing in existing and future transportation, water, stormwater, and technology while planning for sustainable growth and development. The 2023 Water Rate Study will help the Town understand our current and future service costs and Capital cost and guide the Town in setting rates that are adequate to meet the needs of the Town and our customers as we continue to grow.

**Summary Statement:**

Staff presented information to the Board in October of 2022 regarding the Central Weld County Water District rate increase and the potential impact that rate increase could have on the Town's customers and the Water Fund. The Board directed staff to further investigate the Town water rates. Funds were allocated in the 2023 Budget for a comprehensive Water Rate Study.

**Detail of Issue/Request:**

The Town was notified by Central Weld County Water District in 2022 that the water rates would be increased on November 1, 2022. The District later notified the Town that the increase would be phased to spread the impact of the rate increase over time. This phased increase would impact the amount of water included in the base rate. This amount will decrease over 5 years from 4,000 gallons to 0 gallons.

The Town's cost for treated water will increase over time and the Town needs to adjust the current water rates as needed to ensure that the revenues from water sales and tap fees will fund the ownership and maintenance costs and the cost of Capital Projects. The Town is also working through a Potable Water Master Plan, will begin a Non-Potable Water Master Plan soon, and the Town pays for significant participation in the Northern Integrated Supply Project which will increase the Town's Capital Improvement costs over time.

To continue to operate the Water Utility sustainably a Water Rate Study is needed. This will allow the Town to set rates that will fund all Town Water Utility costs so that rate payers and new residents are paying adequate fees so that operations and maintenance of the system can continue without impact on the Water Fund balance that is needed for Capital Improvement Projects and future water supplies.

In February the Town solicited statements of qualification from firms for the creation of the Town's Non-Potable Water Infrastructure Master Plan update. The Town received five (5) Statements of Qualifications. The Town's Engineering and Finance staff reviewed the three Statements and ranked the statements based on Statement Content, Assigned Personnel, Availability, and Statement Quality. Through this thorough review process completed by Engineering and Finance staff the highest rated firm is Willdan Financial Services.

Staff met with Willdan to discuss the Water Rate Study format and Deliverables. The study will be conducted with the follow issues in mind:

- Frederick's community character
- Adequate infrastructure for existing and future developments
- Reducing/managing water demand
- Regional water systems
- Regional land use and growth projections, and water demand resulting from growth within the Town
- Livable communities and the nexus between land use, housing, and water
- Social equity and access for aging, disabled, and low-income populations

The deliverables the Willdan will provide are:

- Powerpoint presentation to the Board
- Final report with Executive Summary
- Excel model that staff can update after the completion of the study

Staff from multiple departments will meet with Willdan to communicate the financial needs of the community and discuss the future needs of the Water Utilty. As they create an optimized financial management plan staff will meet with the consultant for a rate design workshop. Willdan will develop a rate design analysis and present an update rate structure and three additional rate structure alternatives. These rate designs will meet the standards of rate designs: revenue sufficiency, fairness and equity, administrative simplicity, and customer acceptance. Through this process engagement with the Board and community will be vital and we have many meets planed with the consultant so we can gather and provide information to our customers.

**Legal/Political Considerations:**

The Town Attorney has reviewed the resolution.

**Alternatives/Options:**

The Town Board may decide to delay awarding the contract at this time.

**Financial Considerations:**

The contract amount for the design services of Willdan for the Water Rate Study is $67,500.

The 2023 Budget includes $200,000 for a Water Rate Study. This contract award is within the 2023 Budget.

**Staff Recommendation:**

Staff recommends that the Board award the contract and approve Resolution 23-R-20.

# INDEPENDENT CONSULTANT AGREEMENT

**THIS INDEPENDENT CONSULTANT AGREEMENT** (the "Agreement") is made and entered into this ____day of ____________, 2023 (the "Effective Date") by and between the Town of Frederick, Colorado, a Colorado municipal corporation (the "Town") and Willdan Financial Services ("Consultant").

**WHEREAS**, The Town desires to engage the services of Consultant to provide the "Services" more fully described on Exhibit A; and

**WHEREAS**, the Consultant wishes to become associated with the Town as an independent Consultant; and

**WHEREAS**, the parties wish to memorialize their contractual relationship.

**NOW, THEREFORE**, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

## SECTION 1: PARTIES

1.01 Town. Town is a municipal corporation located in Frederick, Colorado.

1.02 Consultant. Consultant is a private, independent business who will exercise discretion and judgment of an independent Consultant in the performance and exercise of its rights and obligations under this Agreement. Consultant shall use its own judgment and skills in determining the method, means, and manner of performing this Agreement. Consultant shall be responsible for the proper performance of this Agreement in accordance with any and all applicable federal, state, and municipal laws, regulations, and orders.

1.03 Intent of the Parties. By this Agreement, Town and Consultant intend for Consultant to be an independent Consultant in relationship to the Town and not the Town's employee or agent. Consequently, Consultant will not be considered an employee or agent of the Town at any time under any circumstances, for any purpose.

a) Consultant does not have the authority to act for the Town, or to bind the Town in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the Town. Consultant is not an agent of the Town, and will not hold itself out to the public as an agent of the Town.

b) Consultant has and hereby retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder. As Consultant will interact with members of the public, Consultant agrees to employ courteous staff for work on the Services.

c) The Town will not provide training or instruction to Consultant or any of its employees regarding the performance of Services hereunder, but will provide information and access to Town staff throughout the Services as contemplated in Exhibit A.

d) Consultant represents that it may be engaged in providing similar services to other municipalities and is not required to work exclusively for the Town.

e) All Services are to be performed solely at the risk of Consultant, and Consultant shall take all precautions necessary for the proper and sole performance thereof.

f) Consultant will not combine its business operations in any way with the Town's business operations, and each party shall maintain their operations as separate and distinct.

1.04 Additional Consultant Obligations. In addition to all other obligations contained herein, Consultant agrees:

a. To furnish all tools, software, labor, and supplies in such quantities and of the proper quality to professionally and timely perform the Services.

b. To proceed with diligence and promptness and hereby warrants that such Services shall be performed in accordance with the highest professional workmanship and service standards to the satisfaction of the Town.

c. To comply, at its own expense, with the provisions of all state, local, and federal laws, regulations, ordinances, requirements, and codes which are applicable to the performance of the Services hereunder or to Consultant as an employer.

## SECTION 2: TERM, DUTIES, COMPENSATION

2.01 Term. This Agreement shall commence on the Effective Date, and shall remain in existence for a period of one (1) year unless sooner terminated as herein provided, and if necessary, shall be submitted to the Town sixty (60) days prior to the expiration of the Agreement to consider renewal subject to annual appropriations by the Town.

2.02 Duties and Compensation. The Consultant's duties, compensation and provisions for payment thereof shall be as set forth in Exhibit A, and any contemplated change in said terms shall be submitted to the Town in writing for review and approval prior to any such change. Consultant shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperate with and provide any other necessary information to Town. Town will pay Consultant within thirty (30) days after receipt of such properly itemized claim forms.

2.03 Background Check. The Town may, at its sole discretion, conduct a background check of Consultant, its owners and employees. Consultant agrees to execute any forms necessary to facilitate the background check.

2.04 Information of Reports. The Consultant shall, at such time and in form as the Town may require, furnish such periodic reports concerning the status of the project, such statements, and copies of proposed and executed plans and other information relative to the project as may be requested by the Town. The Consultant shall furnish the Town, upon request, with copies of all documents, and other material prepared or developed in relation with or as part of the project. Electronic material prepared and/or developed shall be in a format compatible with Microsoft Office 2019 products or other Town compatible software.

**SECTION 3: OPERATIONS**

3.01 Expenses: The Consultant shall not incur any expense or debt on behalf of the Town without written authorization.

3.02 Federal, State, and Municipal Laws and Regulations. Town and Consultant each agree to abide by all applicable federal, state, and municipal laws and regulations and rules.

**SECTION 4: INSURANCE AND INDEMNITY PROVISIONS**

4.01 Insurance. Consultant shall maintain and keep in force during the term hereof in an amount adequate for the Services to be provided herein. Consultant shall require that any of its agents and/or subconsultants who enter upon the Town's premises shall maintain like insurance. Certificates of such insurance shall be provided to Town upon request.

With regard to all insurance, such insurance shall be primary insurance with any applicable insurance held by the Town being excess insurance only. Nothing contained within this Agreement or attachments is intended to be a waiver of the Town's immunity pursuant to the Colorado Governmental Immunity Act.

4.02 Damage and Indemnity. Consultant assumes full responsibility for any and all damages caused by Consultant's exercise of its activities as authorized by this Agreement. Consultant agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or growing out of loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Consultant or any invitees, guests, agents, employees or subconsultants of Consultant, whether brought by any of such persons or any other person arising from Consultant's activities as authorized by this Agreement. Consultant shall promptly pay to the Town, its successors or assigns, the full amount of any such costs, loss or damage which the Town, its successors or assigns may sustain or incur, or for which the Town, its successors or assigns, may become liable. Such indemnity shall not be limited by reason of the enumeration of any insurance coverage required herein. The Town shall not provide such indemnification to

Consultant, provided, however, that Consultant shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of the Town.

**SECTION 5: TERMINATION**

5.01 Termination. Either party upon thirty (30) days prior written notice may terminate this Agreement with or without cause.

a) Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, pandemic, or any causes beyond the control of such party.

b) Upon termination by either party, Consultant shall immediately cease any and all activities related to this Agreement, and shall return any keys, materials, tools, or other items provided by the Town to the Consultant in conjunction with this Agreement along with any work product created prior to the termination.

c) Within thirty (30) days of termination Consultant shall submit a final invoice for unpaid services rendered up to the date of termination. In determining the amount of final payment to be made to Consultant upon such termination no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by Town to be incurred by reason of Consultant's default of this Agreement.

**SECTION 6: MISCELLANEOUS**

6.01 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

| | | | |
|---|---|---|---|
| To Consultant: | ______________________ | To Town: | Town of Frederick |
| | ______________________ | | c/o Town Manager |
| | ______________________ | | P.O. BOX 435 |
| | ______________________ | | Frederick, CO 80530 |

6.02 Savings Clause. If any part, term, or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court authoritatively determines that the relationship between Consultant and Town is one of employment rather than independent Consultant, this Agreement shall become null and void in its entirety.

6.03 Conflicts of Interest. Consultant is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Consultant and any third party. During the term of this agreement, the Consultant shall devote as much productive time, energy and abilities to the performance of its duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Consultant is expressly free to perform services for other parties while performing services for the Town. Consultant certifies and warrants to Town that neither it nor any of its officers, agents, employees, or subconsultants who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with the Town.

6.04 Right to Injunction. The parties hereto acknowledge that the services to be rendered by the Consultant under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Consultant of any of the provisions of this Agreement will cause the Town irreparable injury and damage. The Consultant expressly agrees that the Town shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Consultant. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Town may have for damages or otherwise. The various rights and remedies of the Town under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law. Consultant waives any and all right to injunctive relief in the event of any dispute with the Town, and the Consultant's sole remedy in such a dispute shall be at law limited to the amounts paid by the Town for Services provided pursuant to this Agreement.

6.05 Independent Consultant. This Agreement shall not render the Consultant an employee, partner, agent of, or joint venturer with the Town for any purpose. The Consultant is and will remain an independent Consultant in their relationship to the Town. The Consultant shall have no claim against the Town hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**IMPORTANT NOTICE: INDEPENDENT CONSULTANT IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OR WORKERS' COMPENSATION BENEFITS UNLESS SUCH COVERAGES ARE PROVIDED BY THE INDEPENDENT CONSULTANT OR SOME OTHER ENTITY. CONSULTANT SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSED RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES. NO FEDERAL, STATE OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE TOWN.**

6.06 Records; Audit. Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Consultant shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by the Town or any other authorized representative of the Town. Copies thereof, if requested, shall be furnished at no cost to the Town.

6.07 Ability to Bind the Other Party. Neither Town nor Consultant is the agent of the other, and neither shall have the right to bind the other by contract or otherwise, except as specifically provided in this Agreement.

6.08 Applicable Law. This Agreement shall be construed according to the laws of the State of Colorado with venue in Weld County, Colorado.

6.09 Time. Time is of the essence of this Agreement and of each covenant thereof. In the computation of any period of time, which shall be required or permitted hereunder, for notice, or under any law for any notice or other communication or for the performance of any term, condition, covenant, or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case, the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

6.10 Recitals and Exhibits. The Recitals hereto and any Exhibits which may be attached to this Agreement are hereby incorporated herein and made a part of this Agreement by this reference; however, in the event of a conflict between provisions in this Agreement and any exhibits, the provisions in this Agreement shall control.

6.11 Attorney's Fees. Consultant shall be liable to the Town for reasonable attorneys' fees incurred by the Town in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Consultant, or from Consultant's failure to fulfill any provisions or responsibility provided herein.

6.12 Assignment and Subcontracting. Consultant shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of Town. In the event that the Town approves of any such subcontracting, assignment or delegation, Consultant shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. The Town shall have no obligation whatsoever toward such persons. Consultant shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Consultant of any responsibility for performing under this Agreement.

6.13 No Modification or Waiver of Conditions. Consultant may not waive or modify all or any part of its duties, obligations or conditions hereunder without obtaining the express written consent of the Town.

6.14 Merger of Understanding. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Consultant and supersede all prior negotiations, representations and agreements, whether written or oral, except as where noted. This Agreement may be modified only by a written document signed by both parties and approved by the Town Board at a public meeting.

6.15 Third Party Rights. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto and their respective successors and assigns.

6.16 Non-discrimination. Consultant and its officers, agents, employees, and subconsultants shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement

6.17 Waiver. No consent or waiver, express or implied, by a party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such party or any other party of the same or any other of its obligations. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any such party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

6.18 Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

6.19 Acknowledgment of Review. Consultant hereby expressly acknowledges that he/she has reviewed and understands each and every provision of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates written below.

| | |
|---|---|
| TOWN OF FREDERICK | CONSULTANT |
| By______________________________ | By____________________________ |
| Bryan Ostler, Town Manager | Name, Title ____________________ |

ATTEST:

_________________________________
Meghan C. Martinez, CMC, Town Clerk

## Exhibit A

Exhibit A: Scope of Work

## Task 1 – Data Evaluation and Validation

Based on our experience, it is most effective to obtain and review documentary information (including Short- and Long-Term Water Resources Plans, Water Efficiency Plan, Budget, Fee Schedule, Strategic Plan, current Comp Plan) prior to the first meeting. Willdan's consultants are experienced professionals who can quickly interpret and evaluate utility documents, operating reports, financial reports, and statistics. Typically, questions can be resolved via telephone or e-mail. This approach respects your staff's time and ensures that Willdan is completely prepared for a productive first meeting.

**Activities:**

- Prepare and transmit data and information request;
- Follow-up via telephone and/or e-mail to resolve questions;
- Document the nature, form and quality of the data and information received; and
- Based on documentary information, initialize Willdan's financial planning model and prepare a baseline scenario.

**Deliverables:**

- Documenting of the data and information received, with comments regarding quality and a list of outstanding issues and questions; and
- Pro-forma results, with graphics, of the baseline financial planning scenario and a financial forecast model prepared for initial review with staff.

## Task 2 – Initial Staff Planning Workshop

After Willdan has developed a sound understanding of the information provided, we will schedule an initial staff workshop, which will have three purposes:

1. Review and resolve (or develop a plan for resolving) remaining data issues and questions;
2. Conduct a financial policies and planning workshop to develop assumptions for refining the financial forecast and identifying rate design options; and
3. Conduct a detailed review of the data used in the baseline financial forecast.

**Activities:**

- *Prepare presentation and resource materials for the workshop;*
- *Conduct the workshop. These meeting(s) may require a half day, with a morning or afternoon session. At that time, we anticipate we could prepare a "game plan" with Staff for the remainder of the project; and*
- *Deliver a master project schedule.*

**Deliverables:**

- Presentation and resource materials; and
- Documentation of the results of the workshop:
    - Resolution of data issues;
    - Assumptions and policies, including a range of rate design options, which will serve as a basis for the study;
    - Results of the first interactive session with the financial forecast model and action items for further refinement and corrections; and
    - A refined master project plan for proceeding with the project, based on collaboration between staff and the Willdan Team.

## Task 3 – Development of an Optimized Financial Management Plan

It is important that a credible financial planning foundation be established. ***One of the first things stakeholders want to know is "have we done everything we can to make all this work without a rate increase?"*** It is essential to put a financial management plan on the table that assures top management, elected officials, and the public that the Town has prepared an optimal plan, balancing creativity and responsibility. Willdan will refine the customized financial planning model as a tool for the Town to analyze the utility's current and projected flow of funds and financial position under various scenarios. The model will include the following:

- Revenue analysis;
- Customer growth and demand projections;
- Operating expense projections;
- CIP funding, including the use of any tap fees;
- Other revenue requirements. Non-operating revenue requirements will be identified and projected over the forecast period. A major component of these non-operating revenue requirements is principal and interest payments associated with outstanding and anticipated debt. We will also incorporate pertinent Town fiscal policies, such as reserve requirements and Bond compliance analysis.

Once the revenue sufficiency model has been developed and calibrated, we will facilitate a decision support workshop with Town representatives. During this meeting, we will review the baseline modeling results and interactively test various "what-if" scenarios to ensure that the model reflects the Town's future financial position under the most realistic assumptions.

At the workshop, we will review the underlying data and assumptions in the model and begin testing various alternative assumptions. This will be accomplished using a "dashboard" of the model projected on screen, with the entire group observing and participating. This real-time feedback, with the use of clear graphical displays, allows the entire team to quickly understand the implications of alternative assumptions and either pursue the idea further or discard it and move on to another idea.

The process allows full participation by stakeholders in simulation exercises that quickly and effectively demonstrate the effect of alternative financial plans on the Town's financial condition. Changes in various parameters such as operating and capital expenditures, reserve requirements, or customer growth rates can be evaluated in terms of resulting rate increases. Alternatively, certain levels of rate increases can be evaluated in terms of the resulting effect on the Town to meet budgeted and projected costs, maintain reserves, comply with debt service coverage requirements, and maintain a generally sound financial condition.

In the context of a revenue bond issue (if needed), this process will be carried out with the financing team. We will work with bond counsel, disclosure counsel, underwriters, and the Town's financial advisor to ensure that the financial feasibility of the issue is fully supported.

**Activities:**

- Develop a preliminary set of financial planning scenarios in the customized financial model;
- Prepare presentation and resource materials for the workshop; and
- Conduct the decision support workshop. The workshop meeting may require a full day, with morning and afternoon sessions.

**Deliverables:**

- Presentation and resource materials;
- Documentation of the results of the workshop:
  - Results and discussion of experimental scenarios;
  - Evaluation of scenarios; and
  - Identification of a relevant set of scenarios for presentation to top management, elected officials and other stakeholders.
- A calibrated customized financial model for use by staff to begin the process of developing and refining financial planning skills using the model as a tool; and
- Customized reports in the financial model based on the requirements of schedules for bond feasibility studies.

## Task 4 – Cost of Service Analysis

Willdan will perform a cost-of-service analysis to ensure that the costs associated with water operations are allocated equitably to each customer class, to support the development of cost-based rates, and to aid in the development of financial plans for the future. The cost-of-service activities will be coupled with the revenue sufficiency and rate modeling tasks, so that the impact of changes in capital expenditures, O&M expenditures, growth projections, and other parameters on the cost-of-service can be determined.

This analysis will include gathering cost information associated with water rates and allocation to functions, classification, and each existing customer class. We will also review the number and type of existing customer classes and make recommendations to add or consolidate customer classes, if necessary.

The allocation of water rates to customer classes will be conducted to estimate the cost of serving each customer class and to enable rate restructuring, as necessary, based on the service requirements. Costs will be allocated in accordance with industry standards.

### Classification of Costs

Operating and non-operating costs will be classified into functional components. Classification of costs into functional components will allow costs (including general and administrative costs) to be allocated between:

- Functional components;
- Current and future customers (user fees and tap fees, respectively);
- Separate geographic services areas, such as in/outside the Town;
- Charges for special services ("miscellaneous fees and charges") and user fees; and
- Each customer class.

**Activities:**

- Enter cost data into Willdan's cost-of-service worksheets;
- Adjust and calibrate allocation factors consistent with the Town's system characteristics;
- Prepare and review cost-of-service allocations; and
- Prepare technical memorandum.

**Deliverables:**

- Cost-of-service allocation tables and summaries; and
- Draft Report under development at this time, documenting the results of the cost-of-service study.

## Task 5 – Rate Design Analysis

This task will involve modeling several alternative rate structures using the Town's financial data and billing statistics to demonstrate the resulting customer impacts and to identify key issues associated with the new rates and charges.

Basic standards for rate design accepted by the industry are:

- Revenue sufficiency – rate revenue should provide sufficient income so that, when combined with other sources of funds, total system costs are covered.
- Fairness and equity – based on cost responsibility as reflected in cost-of-service allocations, in accordance with industry standards.
- Administrative simplicity – so that rates are understandable to customers and efficiently administered by staff.
- Customer acceptance – customers understand the rates, view them as fair, and consider them to be reasonable compared to other costs and other utilities.

Objectives such as equity and cost recovery are a given in this type of analysis, but additional items such as customer acceptance and simplicity are often key concerns for stakeholders. While there are many common objectives, some objectives vary by utility, due to different operating conditions, such as previous responses to rate increases, customer class demographics, resource availability, growth pressures and socioeconomic conditions. Our analysis will help the Town align rates in support of overall goals including conservation. Through the rate design process, we will update the existing rate structures for cost of service as well as developing three (3) additional rate structure alternatives. One of the rate options provided will be a budget-based rate structure. Rate classes to be examined may include:

- Single-family Residential
- Multi-Family Residential
- Commercial
- Non-potable Water
- Irrigation

**Activities:**

- Obtain and test billing system data;
- Incorporate billing system data into rate design model;
- Calibrate and validate the model by replicating current revenue at current rates; and
- Develop initial set of rate design scenarios based on project initiation workshop with the Town.

**Deliverables:**

- Presentation and resource materials for the rate design workshop;
  - Results and discussion of experimental scenarios;
  - Identification of fixed versus variable costs;
  - Evaluation of scenarios; and
  - Identification of a relevant set of scenarios for presentation to top management, elected officials and other stakeholders.

## Task 6 – Reports, Presentations, and Public Information and Educational Assistance

Taking a proactive role in communicating with stakeholders increases trust in the utility provider, improves the stakeholders' understanding of utility operations and services, and establishes a foundation for future positive relations within the community. Willdan envisions an outreach program that utilizes an effective combination of communication tools, reaching numerous people with a message that accurately reflects the Town's goals. The extent of our program will be determined by the Town's decision about stakeholder involvement. During this task, we will develop presentation formats specifically tailored to the needs of the audience and may include stakeholder meetings, bill inserts and a rate calculator for the Town's website.

We stress clear, concise presentation of findings, using easily understandable terminology and clear, colorful graphics. Assigned staff are trained, skilled, and experienced in managing difficult presentation environments at all organizational levels in a manner that results in the satisfaction of the audience's need for information. We recognize that the presentation of recommendations for rate increases and significant changes in rate structure can be difficult and must be managed with tact, confidence, and honesty.

**Activities:**

- Prepare reports, public information communications, and presentations that will be reviewed with staff and revised;
- Make presentations to top management, elected officials (2 meetings), and other stakeholders (2 meetings for public input); and
- Review and approve rate ordinances/resolutions for consistency with adopted rate recommendations.

**Deliverables:**

- PowerPoint presentation for public meetings, with summary information in pamphlet form;
- Executive summary report for top management, Town Board, and the public;
- Comparison of rates and fees to comparable communities;
- Complete technical report, including a description of the methodology utilized, justification for the underlying forecast assumptions, and documentation of the decision-making process, to act as documentation of the work performed; and
- We provide the Town our excel based model for Staff to maintain and update after the completion of the study.

## Task 7 –Meetings

The success of the rate study requires collaboration between Town Staff and Willdan. To help accomplish this goal we anticipate weekly status update meetings via phone or web meeting. Additionally we anticipate up to 12 on site meetings with staff and stakeholders. If all 12 meetings are not undertaken the Town will only be billed for meetings that take place. Anticipated meetings include:

- Kick off meeting
- Review preliminary financial findings
- Rate design workshop
- Review preliminary rates with staff
- Present preliminary rates to the public
- Present recommended rates to the public
- Present recommendations to the Board (2 meetings)
- 4 additional meetings to be determined by Town Staff

### Fee Estimate

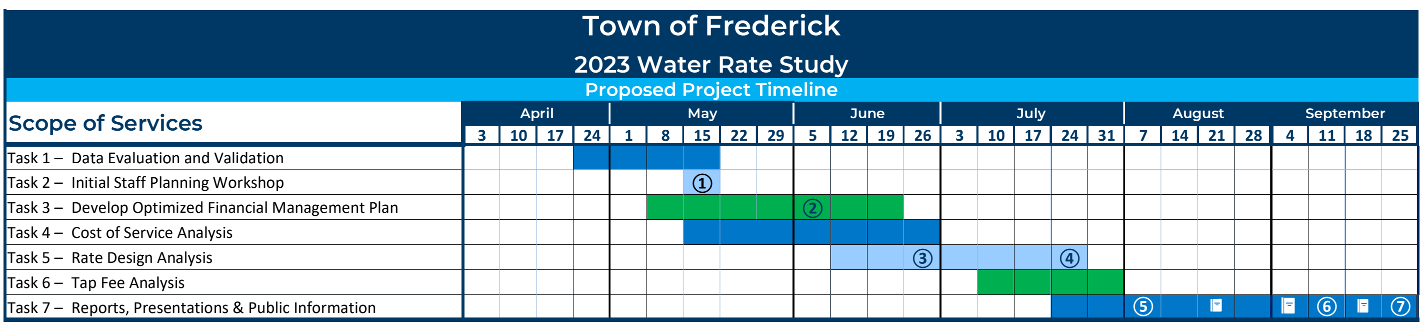
On the basis of the Scope described herein, total billings will not exceed $67,500. A breakdown of the fees by task is included in the table below.

## Fee Proposal

| Scope of Services | | Total Cost |
|---|---|---|
| Task 1 – | Data Evaluation and Validation | $ 5,709 |
| Task 2 – | Initial Staff Planning Workshop | $ 3,466 |
| Task 3 – | Development of Optimized Financial Plan | $ 7,452 |
| Task 4 – | Cost of Service Analysis | $ 8,412 |
| Task 5 – | Rate Design Analysis | $ 8,899 |
| Task 6 – | Reports, Presentations and Public Information and Educational Assistance | $ 6,925 |
| Task 7 – | Meetings | $ 26,636 |
| **Total Cost** | | **$ 67,500** |

### Schedule

A proposed schedule is presented below, however, the schedule will be revisited with staff during the kick off meeting to ensure the Town's schedule and needs are met.




**Deliverables**

1. Kick off meeting
2. Review Preliminary Financial Findings
3. Conduct Rate Design Workshop
4. Review Preliminary Rates with Staff
5. Present Preliminary Rates to the Public
6. Present Recommended Rates to the Public
7. Present Recommendations to Board at a Public Hearing

- Draft and final reports

**Central Weld County Water District**
**Board of Directors**
2235 2nd Ave, Greeley, Colorado 80631
cwcwd.com

November 7th, 2022

Board of Directors
Town of Frederick
Mayor Crites
PO Box 435
Frederick, CO 80530

Dear All:

The Central Weld County Water District (CWCWD) Board of Directors would like to provide a follow-up update on the recent rate change communication and to be as transparent as possible. First, we want to acknowledge the unintended confusion as a result of the recent letter as it pertains to a comparative table based on billing information. The District inadvertently included some incorrect billing data, and we apologize for that confusion.

In reviewing the data for each community and the number of gallons historically allotted for each tap equivalent, the District has decided to include a base of 4,000 gallons of water per tap equivalent per month for each of the Towns for this next water year. The intent of this additional 2,000 gallons of water per tap equivalent is to help ease some of the economic burden from the previous rate structure that was provided to your community this past month.

Moving forward, the base water allotment per tap equivalent will be decreased by 1,000 gallons per tap equivalent each year until there is no water included per tap equivalent which would match the existing structure for the District's non-master metered customers.

As was previously communicated to you, the District had no water rate increases for nearly three decades. This course of action was unsustainable and detrimental to the integrity of the Districts operations. In short, the District was compelled to plan for a more sustainable future to continue to provide reliable water to its customers. The effects of inflation on treatment and distribution have been very real and painful for us and the communities we serve. Rather than passing the full burden on to the communities we serve immediately, CWCWD has taken a multi-year approach to raising our wholesale water rates and residential water rates to ensure that communities and our customers could manage any additional financial burden.

**Central Weld County Water District**
**Board of Directors**
2235 2nd Ave, Greeley, Colorado 80631
cwcwd.com

The table below shows the rate change for the average residential customer with a 5/8" Meter or 1 Tap Equivalent.

*Table 1. Town of Frederick – Proposed Rate Changes*

| 4906.5 TE** | | | Proposed Billing* | | | | |
|---|---|---|---|---|---|---|---|
| Month | Water Use (1000 Gallons) | 2022 Billing | *2022-2023 Billing* | *2023-2024 Proposed Billing **** | *2024-2025 Proposed Billing* | *2025-2026 Proposed Billing* | *2026-2027 Proposed Billing* |
| | | | 4000 Gallons per TE | 3000 Gallons per TE | 2000 Gallons per TE | 1000 Gallons per TE | 0 Gallons per TE |
| January | 27,292 | $ 46,164 | $ 55,068 | $ 66,107 | $ 77,147 | $ 88,877 | $ 101,143 |
| February | 13,044 | $ 41,159 | $ 37,819 | $ 37,819 | $ 45,089 | $ 56,129 | $ 67,168 |
| March | 17,359 | $ 41,275 | $ 37,819 | $ 43,758 | $ 54,798 | $ 65,837 | $ 76,877 |
| April | 19,311 | $ 41,344 | $ 37,819 | $ 48,150 | $ 59,190 | $ 70,229 | $ 81,269 |
| May | 46,159 | $ 82,559 | $ 99,245 | $ 111,512 | $ 123,778 | $ 136,044 | $ 148,310 |
| June | 62,800 | $ 114,510 | $ 140,848 | $ 153,114 | $ 165,380 | $ 177,647 | $ 189,913 |
| July | 70,060 | $ 128,449 | $ 158,998 | $ 171,264 | $ 183,530 | $ 195,797 | $ 208,063 |
| August | 177,807 | $ 335,323 | $ 460,844 | $ 475,563 | $ 490,283 | $ 505,002 | $ 519,722 |
| September | 100,382 | $ 186,934 | $ 234,803 | $ 247,069 | $ 259,335 | $ 272,727 | $ 287,447 |
| October | 69,041 | $ 126,759 | $ 156,450 | $ 168,717 | $ 180,983 | $ 193,249 | $ 205,515 |
| November | 25,813 | $ 43,762 | $ 51,740 | $ 62,780 | $ 73,819 | $ 85,179 | $ 97,445 |
| December | 24,777 | $ 42,105 | $ 49,409 | $ 60,449 | $ 71,488 | $ 82,589 | $ 94,855 |
| | | | | | | | |
| Total Income | | $1,230,343 | $ 1,520,863 | $ 1,646,302 | $ 1,784,821 | $ 1,929,306 | $ 2,077,728 |
| Average Monthly Cost per T.E. | | $ 20.90 | $ 25.83 | $ 27.96 | $ 30.31 | $ 32.77 | $ 35.29 |
| Projected Annual Increase (%) | | | 24% | 8% | 8% | 8% | 8% |

*Proposed billings are based on rates of 2022 and are subject to change based upon approval by the Board.
** Tap numbers were updated from previous reports, showing correct/updated CWCWD data
*** Billings are based on the Water Year, which is defined as the twelve-month (12 mo.) period beginning: November 1, of any given year through October 31, of the following year.

*Month November and December are not actuals but based on estimates for 2022 Billing*

We would be happy to answer any further questions regarding our coming rate changes. Thank you for your patience and understanding as we have worked through these new rate structures.

Sincerely,
Board of Directors
Central Weld County Water District

# CENTRAL WELD COUNTY WATER DISTRICT

July 29, 2022

RE: 2022 Monthly Detailed Rate Schedule & Capital Improvement Fees *REVISED TIER SCHEDULE*

Dear Town of Frederick,
The Central Weld County Water District Board of Directors approved a new rate schedule at the public rate hearing held on July 21, 2022. This increase comes after an extensive look at expenses for the maintenance of the distribution system and upgrades needed to existing telemetry systems, treatment costs and upgrades to the filter plant and storage, etc. The District must take all steps necessary to ensure the water is safe to drink and to meet increasing demands for all anticipated growth.

The rate schedule for the Towns assesses a monthly minimum charge equal to 40% of the retail customer minimum charge which is $7.71/month (0.4 x $19.27) per 5/8" equivalent meter times the number of tap equivalent meters certified by each town. When the town's monthly usage is above the minimum the town will be billed at the District's rates in effect for the largest volume usage

Although the revised charges do not completely recover the allocated costs of service to the towns the revised rate calculation goes a long way towards establishing a more equitable distribution of costs between the rural and the town customers. **The new rates beginning with the November 2022 billing are as follows:**

| Usage per Thousand Gallons | | Rate per Thousand Gallons |
|---|---|---|
| 0-4,000 | Tier One | $2.25 |
| 5,000 – 19,000 | Tier Two | $2.50 |
| 20,000 - 150,000 + | Tier Three | $3.00 |

The Capital Improvement Fees for the District was also increased as part of the same rate hearing and will also increase effective November 1, 2022:

| Meter Size | 5/8" Tap Equivalent | Study Fee | Capital Investment Fee Eff. 11/1/22 | Installation Fee | C.B.T Raw Water Fee (NCWCD) Proposed |
|---|---|---|---|---|---|
| **Quarter** | **0.25** | $50 | $12,000 | $2,000 | **Market Value** |
| Budget | 0.5 | $50 | $12,000 | $2,000 | **Market Value** |
| 5/8" | 1 | $50 | $12,000 | $2,000 | **Market Value** |
| 3/4" | 1.5 | $75 | $18,000 | $3,000 | **Market Value** |
| 1" | 2.5 | $125 | $30,000 | $5,000 | **Market Value** |
| 1 1/2" | 5 | $250 | $60,000 | $10,000 | **Market Value** |
| 2" | 8 | $400 | $96,000 | $16,000 | **Market Value** |
| 3" | 15 | $750 | $180,000 | $30,000 | **Market Value** |
| 4"' | 25 | $1,250 | $300,000 | $50,000 | **Market Value** |
| 6" | 50 | $2,500 | $600,000 | $100,000 | **Market Value** |
| 8" | 80 | $4,000 | $960,000 | $160,000 | **Market Value** |

2235 2nd Avenue • Greeley, Colorado 80631 • Phone (970) 352-1284 • Fax (970) 353-5865

Administrative Fees such as Study Fees, Can Serve and Add Serve Letter Fees, etc. have all increased effective August 1, 2022 if applicable. A complete list is available on our website at www.cwcwd.com.

We evaluate our rates by considering operational costs, energy costs, infrastructural repairs and capital construction costs and are, unfortunately, in a time of great cost surges.

We have to continue to upgrade our system with advanced telemetry systems, GIS Mapping, storage, and delivery designed to better meet the peak demands of the system and stricter State and Federal guidelines for water quality.

If you have any questions regarding the revised rates please call.

Sincerely,
CENTRAL WELD COUNTY WATER DISTRICT

Stan Linker, District Manager

**TOWN OF FREDERICK, COLORADO**
**RESOLUTION NO. 23-R-20**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, TO AWARD A CONTRACT FOR THE 2023 WATER RATE STUDY AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT**

**WHEREAS,** in accordance with Chapter 4 Article V, the Town is not required to seek bids for technical and professional services, notwithstanding the Town issued a Request for Qualifications and interviewed several firms for the 2023 Water Rate Study; and,

**WHEREAS,** the Board of Trustees finds that the preferred consultant for this contract award is Willdan Financial Services.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:**

**1.** The Board of Trustees accepts the scope of Willdan Financial Services in the amount of $67,500 as the preferred consultant on the 2023 Water Rate Study project as reflected in the accompanied Action Memorandum and authorizes the Town Manager to sign a contract, subject to finalization and review by the Town Attorney that is substantively the same as the attached Exhibit A.

**INTRODUCED, READ, PASSED, AND SIGNED THIS 25TH DAY OF APRIL, 2023.**

**TOWN OF FREDERICK**

By: ________________________________________
Tracie Crites, Mayor

**ATTEST:**
By: ____________________________
Meghan C. Martinez, MMC, Town Clerk

# TOWN OF FREDERICK
# Board of Trustees
# Action Memorandum



## Consider Awarding a Contract for the Non-Potable Water Infrastructure Master Plan

**Agenda Date:** Town Board Meeting – April 25, 2023

**Attachments:**
a. Non-Potable Water Infrastructure Master Plan Contract
b. Scope Document
c. Resolution 23-R-21

**Finance Review:** ______________________________
Finance Director

**Submitted by:** Sarah Watson
Civil Engineer, EI

**Approved for Presentation:** Bryan Ostler
Town Manager

☐ Quasi-Judicial ☐ Legislative ☒ Administrative

**Strategic Plan Alignment:**

Strategic, Reliable & Sustainable Infrastructure: Frederick is dedicated to investing in existing and future transportation, water, stormwater, and technology while planning for sustainable growth and development. The Non-Potable Water Infrastructure Master Plan update will support the Town's goal by identifying improvements needed for the Non-Potable Water System to be reliable and sustainable.

**Summary Statement:**

A Non-Potable Water Infrastructure Master Plan is one of the last plans needed to support the Town and Staff in planning and decision making regarding non-potable water infrastructure improvements. This plan will be used to identify future Capital Improvement Projects required to the completed by the Town and future development.

**Detail of Issue/Request:**

In January/February the Town solicited statements of qualification from firms for the creation of the Town's Non-Potable Water Infrastructure Master Plan update. The Town received three (3) Statements of Qualifications. The Town's Engineering staff reviewed the three Statements and ranked the statements based on Statement Content, Assigned Personnel, Availability, and Statement Quality. Through this thorough review process completed by Engineering staff the highest rated firm is Forsgren Associates, Inc (Forsgren).

After Staff identified the highest-ranking firm a scope meeting was conducted with the Forsgren team to discuss in more detail the items and or issues that the Town needs the plan to address. These items are:

- Reliability and sustainability of non-potable water infrastructure, current and future
- Emergency response (fire protection)
- Water management and conservation
- Water quality
- Town connectivity
- Social equity
- Relationship between land use, housing and potable water for livable communities
- Public engagement

Work to be completed by Forsgren includes data review, GIS mapping update, condition and reliability assessment of existing infrastructure, water quality review, hydraulic model creation and analyses, community and stakeholder engagement, review of Town Design Standards and Policies, preparation of a Master Plan Report and presentations to the Board of the draft and final Master Plan Report, and designs for an initial phase of improvements.

The Master Plan report will include a list of Capital Improvement Projects, similar to the recent Transportation Master Plan and Drainage Master Plan. This list of Capital Improvement Projects will be incorporated into the Town's Capital Improvement Project list.

In 2022, the Long-Term water Supply Plan and Water Efficiency Plan have been completed and adopted. The Town is currently working on a Potable Water Master Plan that will be completed later this year. The next plan identified to begin this year is the Non-Potable Water Infrastructure Master Plan update for which staff is requesting approval of the contract award to Forsgren.

**Legal/Political Considerations:**

The Town Attorney has drafted the resolution.

**Alternatives/Options:**

The Town Board may decide to delay awarding the contract at this time.

**Financial Considerations:**

The contract amount for the design services of Forsgren for the Master Plan is $199,900. The contract amount for the design of the initial phase of improvements is $89,700.

The 2023 Budget includes $200,000 for a Non-Potable Water Master Plan and $320,000 for the design and construction of the initial phase of improvements. This contract award is within the 2023 Budget. The design and construction of the phase 1 improvements is a potential project that could be funded by the ARPA funds.

**Staff Recommendation:**

Staff recommends that the Board award the contract and approve Resolution 23-R-21.

# INDEPENDENT CONSULTANT AGREEMENT

**THIS INDEPENDENT CONSULTANT AGREEMENT** (the "Agreement") is made and entered into this ____day of ____________, 2023 (the "Effective Date") by and between the Town of Frederick, Colorado, a Colorado municipal corporation (the "Town") and **Forsgren Associates, Inc.** ("Consultant").

**WHEREAS**, The Town desires to engage the services of Consultant to provide the "Services" more fully described on Exhibit A; and

**WHEREAS**, the Consultant wishes to become associated with the Town as an independent Consultant; and

**WHEREAS**, the parties wish to memorialize their contractual relationship.

**NOW, THEREFORE**, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby mutually agree as follows:

## SECTION 1: PARTIES

1.01 Town. Town is a municipal corporation located in Frederick, Colorado.

1.02 Consultant. Consultant is a private, independent business who will exercise discretion and judgment of an independent Consultant in the performance and exercise of its rights and obligations under this Agreement. Consultant shall use its own judgment and skills in determining the method, means, and manner of performing this Agreement. Consultant shall be responsible for the proper performance of this Agreement in accordance with any and all applicable federal, state, and municipal laws, regulations, and orders.

1.03 Intent of the Parties. By this Agreement, Town and Consultant intend for Consultant to be an independent Consultant in relationship to the Town and not the Town's employee or agent. Consequently, Consultant will not be considered an employee or agent of the Town at any time under any circumstances, for any purpose.

a) Consultant does not have the authority to act for the Town, or to bind the Town in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the Town. Consultant is not an agent of the Town, and will not hold itself out to the public as an agent of the Town.

b) Consultant has and hereby retains control of and supervision over the performance of Consultant's obligations hereunder and control over any persons employed by Consultant for performing the Services hereunder. As Consultant will interact with members of the public, Consultant agrees to employ courteous staff for work on the Services.

c) The Town will not provide training or instruction to Consultant or any of its employees regarding the performance of Services hereunder, but will provide information and access to Town staff throughout the Services as contemplated in Exhibit A.

d) Consultant represents that it may be engaged in providing similar services to other municipalities and is not required to work exclusively for the Town.

e) All Services are to be performed solely at the risk of Consultant, and Consultant shall take all precautions necessary for the proper and sole performance thereof.

f) Consultant will not combine its business operations in any way with the Town's business operations, and each party shall maintain their operations as separate and distinct.

1.04 Additional Consultant Obligations. In addition to all other obligations contained herein, Consultant agrees:

a. To furnish all tools, software, labor, and supplies in such quantities and of the proper quality to professionally and timely perform the Services.

b. To proceed with diligence and promptness and hereby warrants that such Services shall be performed in accordance with the highest professional workmanship and service standards to the satisfaction of the Town.

c. To comply, at its own expense, with the provisions of all state, local, and federal laws, regulations, ordinances, requirements, and codes which are applicable to the performance of the Services hereunder or to Consultant as an employer.

**SECTION 2: TERM, DUTIES, COMPENSATION**

2.01 Term. This Agreement shall commence on the Effective Date, and shall remain in existence for a period of one (1) year unless sooner terminated as herein provided, and if necessary, shall be submitted to the Town sixty (60) days prior to the expiration of the Agreement to consider renewal subject to annual appropriations by the Town.

2.02 Duties and Compensation. The Consultant's duties, compensation and provisions for payment thereof shall be as set forth in Exhibit A, and any contemplated change in said terms shall be submitted to the Town in writing for review and approval prior to any such change. Consultant shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperate with and provide any other necessary information to Town. Town will pay Consultant within thirty (30) days after receipt of such properly itemized claim forms.

2.03 Background Check. The Town may, at its sole discretion, conduct a background check of Consultant, its owners and employees. Consultant agrees to execute any forms necessary to facilitate the background check.

2.04 Information of Reports. The Consultant shall, at such time and in form as the Town may require, furnish such periodic reports concerning the status of the project, such statements, and copies of proposed and executed plans and other information relative to the project as may be requested by the Town. The Consultant shall furnish the Town, upon request, with copies of all documents, and other material prepared or developed in relation with or as part of the project. Electronic material prepared and/or developed shall be in a format compatible with Microsoft Office 2019 products or other Town compatible software.

**SECTION 3: OPERATIONS**

3.01 Expenses: The Consultant shall not incur any expense or debt on behalf of the Town without written authorization.

3.02 Federal, State, and Municipal Laws and Regulations. Town and Consultant each agree to abide by all applicable federal, state, and municipal laws and regulations and rules.

**SECTION 4: INSURANCE AND INDEMNITY PROVISIONS**

4.01 Insurance. Consultant shall maintain and keep in force during the term hereof in an amount adequate for the Services to be provided herein. Consultant shall require that any of its agents and/or subconsultants who enter upon the Town's premises shall maintain like insurance. Certificates of such insurance shall be provided to Town upon request.

With regard to all insurance, such insurance shall be primary insurance with any applicable insurance held by the Town being excess insurance only. Nothing contained within this Agreement or attachments is intended to be a waiver of the Town's immunity pursuant to the Colorado Governmental Immunity Act.

4.02 Damage and Indemnity. Consultant assumes full responsibility for any and all damages caused by Consultant's exercise of its activities as authorized by this Agreement. Consultant agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or growing out of loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Consultant or any invitees, guests, agents, employees or subconsultants of Consultant, whether brought by any of such persons or any other person arising from Consultant's activities as authorized by this Agreement. Consultant shall promptly pay to the Town, its successors or assigns, the full amount of any such costs, loss or damage which the Town, its successors or assigns may sustain or incur, or for which the Town, its successors or assigns, may become liable. Such indemnity shall not be limited by reason of the enumeration of any insurance coverage required herein. The Town shall not provide such indemnification to

Consultant, provided, however, that Consultant shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of the Town.

**SECTION 5: TERMINATION**

5.01 Termination. Either party upon thirty (30) days prior written notice may terminate this Agreement with or without cause.

a) Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, pandemic, or any causes beyond the control of such party.

b) Upon termination by either party, Consultant shall immediately cease any and all activities related to this Agreement, and shall return any keys, materials, tools, or other items provided by the Town to the Consultant in conjunction with this Agreement along with any work product created prior to the termination.

c) Within thirty (30) days of termination Consultant shall submit a final invoice for unpaid services rendered up to the date of termination. In determining the amount of final payment to be made to Consultant upon such termination no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by Town to be incurred by reason of Consultant's default of this Agreement.

**SECTION 6: MISCELLANEOUS**

6.01 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

| | | | |
|---|---|---|---|
| To Consultant: | Will Kroger | To Town: | Town of Frederick |
| | Forsgren Associates Inc. | | c/o Town Manager |
| | 56 Inverness Drive East, Se. 112 | | P.O. BOX 435 |
| | Englewood, CO 80112 | | Frederick, CO 80530 |

6.02 Savings Clause. If any part, term, or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court authoritatively determines that the relationship between Consultant and Town is one of employment rather than independent Consultant, this Agreement shall become null and void in its entirety.

6.03 Conflicts of Interest. Consultant is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Consultant and any third party. During the term of this agreement, the Consultant shall devote as much productive time, energy and abilities to the performance of its duties hereunder as is necessary to perform the required duties in a timely and productive manner. The Consultant is expressly free to perform services for other parties while performing services for the Town. Consultant certifies and warrants to Town that neither it nor any of its officers, agents, employees, or subconsultants who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with the Town.

6.04 Right to Injunction. The parties hereto acknowledge that the services to be rendered by the Consultant under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any action at law, and the breach by the Consultant of any of the provisions of this Agreement will cause the Town irreparable injury and damage. The Consultant expressly agrees that the Town shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Consultant. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the Town may have for damages or otherwise. The various rights and remedies of the Town under this Agreement or otherwise shall be construed to be cumulative, and no one of them shall be exclusive of any other or of any right or remedy allowed by law. Consultant waives any and all right to injunctive relief in the event of any dispute with the Town, and the Consultant's sole remedy in such a dispute shall be at law limited to the amounts paid by the Town for Services provided pursuant to this Agreement.

6.05 Independent Consultant. This Agreement shall not render the Consultant an employee, partner, agent of, or joint venturer with the Town for any purpose. The Consultant is and will remain an independent Consultant in their relationship to the Town. The Consultant shall have no claim against the Town hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**IMPORTANT NOTICE: INDEPENDENT CONSULTANT IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OR WORKERS' COMPENSATION BENEFITS UNLESS SUCH COVERAGES ARE PROVIDED BY THE INDEPENDENT CONSULTANT OR SOME OTHER ENTITY. CONSULTANT SHALL SATISFY ALL TAX AND OTHER GOVERNMENTALLY IMPOSED RESPONSIBILITIES INCLUDING, BUT NOT LIMITED TO, PAYMENT OF STATE, FEDERAL AND SOCIAL SECURITY TAXES, UNEMPLOYMENT TAXES, WORKERS' COMPENSATION AND SELF-EMPLOYMENT TAXES. NO FEDERAL, STATE OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE TOWN.**

6.06 Records; Audit. Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Consultant shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by the Town or any other authorized representative of the Town. Copies thereof, if requested, shall be furnished at no cost to the Town.

6.07 Ability to Bind the Other Party. Neither Town nor Consultant is the agent of the other, and neither shall have the right to bind the other by contract or otherwise, except as specifically provided in this Agreement.

6.08 Applicable Law. This Agreement shall be construed according to the laws of the State of Colorado with venue in Weld County, Colorado.

6.09 Time. Time is of the essence of this Agreement and of each covenant thereof. In the computation of any period of time, which shall be required or permitted hereunder, for notice, or under any law for any notice or other communication or for the performance of any term, condition, covenant, or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case, the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

6.10 Recitals and Exhibits. The Recitals hereto and any Exhibits which may be attached to this Agreement are hereby incorporated herein and made a part of this Agreement by this reference; however, in the event of a conflict between provisions in this Agreement and any exhibits, the provisions in this Agreement shall control.

6.11 Attorney's Fees. Consultant shall be liable to the Town for reasonable attorneys' fees incurred by the Town in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Consultant, or from Consultant's failure to fulfill any provisions or responsibility provided herein.

6.12 Assignment and Subcontracting. Consultant shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of Town. In the event that the Town approves of any such subcontracting, assignment or delegation, Consultant shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. The Town shall have no obligation whatsoever toward such persons. Consultant shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Consultant of any responsibility for performing under this Agreement.

6.13 No Modification or Waiver of Conditions. Consultant may not waive or modify all or any part of its duties, obligations or conditions hereunder without obtaining the express written consent of the Town.

6.14 Merger of Understanding. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Consultant and supersede all prior negotiations, representations and agreements, whether written or oral, except as where noted. This Agreement may be modified only by a written document signed by both parties and approved by the Town Board at a public meeting.

6.15 Third Party Rights. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto and their respective successors and assigns.

6.16 Non-discrimination. Consultant and its officers, agents, employees, and subconsultants shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement

6.17 Waiver. No consent or waiver, express or implied, by a party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such party or any other party of the same or any other of its obligations. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any such party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

6.18 Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

6.19 Acknowledgment of Review. Consultant hereby expressly acknowledges that he/she has reviewed and understands each and every provision of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates written below.

| | |
|---|---|
| TOWN OF FREDERICK | CONSULTANT |
| By_____________________________ | By___________________________ |
| Bryan Ostler, Town Manager | Name, Title ____________________ |

ATTEST:

________________________________
Meghan C. Martinez, CMC, Town Clerk

**Exhibit A**

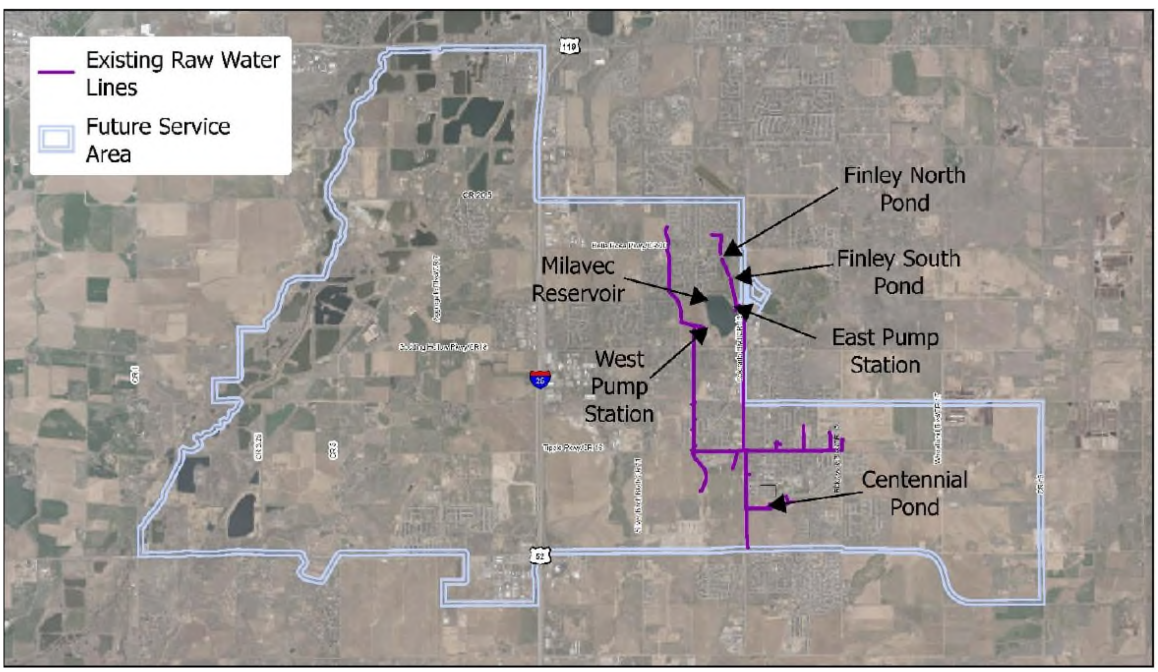
FORSGREN Associates Inc.

**TOWN OF FREDERICK**
**NON-POTABLE WATER INFRASTRUCTURE MASTER PLAN**
***Scope of Services***
April 4, 2023

**BACKGROUND:** Frederick is experiencing rapid development growth, highlighting the importance of strategic water planning to provide reliable and sustainable infrastructure. Non-potable water is an important component in the Town's water portfolio since it reduces potable water demand. Existing irrigation ditches, Milavec Reservoir, and other smaller ponds provide building blocks upon which Frederick can expand its non-potable water system.

The Town's existing non-potable water infrastructure includes:

- Milavec Reservoir
- East pump station at Milavec Reservoir and transmission pipes to convey NPW to Town-owned parks and open spaces.
- West pump station at Milavec Reservoir and transmission pipes. This pump station conveys NPW to primarily privately-owned parks and open spaces, but also to the Town-owned skate park.
- Gravity pipeline from Milavec Reservoir to two ponds at Bella Rosa Golf Course (Finley North Pond & Finley South Pond).
- Irrigation pump houses at Centennial Park, Finley North Pond & Finley South Pond.




*Frederick Non-Potable Water System Map*
*(from Town of Frederick RFQ, 1/31/23)*

Based on the Town's Request for Qualifications, it is understood the Town would like the following items either preserved or addressed in the Master Plan:

- Frederick's small town community character
- Adequate infrastructure for existing and future developments
- Connectivity within the Town
- Reducing/managing water demand
- Regional water systems within Town limits
- Regional land use and growth projections, and water demand resulting from growth within the Town
- Livable communities and the nexus between land use, housing, and water
- Social equity and access for aging, disabled, and low-income populations
- Public engagement
- Potential funding sources for non-potable water infrastructure improvements
- Improvements needed at existing private non-potable water systems

**Scope of Services:**

1. **Kickoff Meeting with Town Staff and tour of NPW system** – This is the important first step to discuss Town staff's vision for the Master Plan, understand the Town's goals, establish communication protocols, confirm schedule milestones, and discuss known Phase I improvements to be designed. Following the meeting, we plan to take an overview tour of the non-potable water infrastructure with the Engineering and Parks & Open Space Departments.

2. **Ongoing Regular Communication with Town Staff** – Forsgren will conduct weekly status meetings with Town staff to provide progress reports, discuss information needs from the Town, and review upcoming tasks. These meetings are planned to be virtual and take on average approximately 30 minutes each. We plan to combine these meetings with the weekly meetings for the Potable Water Infrastructure Master Plan.

3. **Meetings with Town Planning Department –** At an early stage in this Master Plan development, Forsgren will participate in a joint meeting (virtual) with the Town's Planning and Engineering departments to discuss plans for the west side of the interstate, the ongoing Comprehensive Plan update, the 25/52 East Subarea Plan, upcoming developments with non-potable water needs, Priority Growth Areas, Land Use Plan, and other non-potable water system planning items. A second meeting with the Planning Department will be held during the master plan preparation to obtain input pertaining to draft master plan recommendations.

4. **Meeting with Town Parks & Open Space Department –** Forsgren will participate in a joint meeting (virtual) with the Town's Parks & Open Space Department and the Engineering Department to discuss non-potable water needs. This meeting can be held concurrently with one of the weekly update meetings.

5. **Data Review** – Forsgren will review data and reports furnished by the Town, including related past studies and reports, GIS mapping, design and as-built drawings, operation and maintenance manuals for existing pump stations, existing telemetry system information, Town design standards, non-potable water usage, low pressure data, historical non-potable waterline leak and repair work orders, and other pertinent information.

6. **GIS mapping update -** Forsgren's surveyor will obtain GPS points for locations and elevations of valves for existing non-potable water transmission pipes. Forsgren will incorporate the field data obtained and submit the updated GIS mapping to the Town for review and confirmation.

7. **Condition Assessment of Existing Infrastructure -** With input from Town staff, Forsgren will identify known issues with the existing non-potable water system, and obtain installation dates for pump stations and piping. Based on the site visit after the kick-off meeting, and the data furnished by the Town, Forsgren will assess:

   - Main pump stations and irrigation pump houses - The two main pump stations are located at Milavec Reservoir (east and west sides). Irrigation pump houses are at the Finley North Pond, Finley South Pond, and Centennial Park pond. We will assess pump and motor age and condition, pump capacity to deliver flow and adequate pressure, and condition of piping, valves and pump houses. We will also estimate the remaining useful life of the components.
   - Ponds – review sizes of ponds to determine adequacy of storage.
   - Transmission piping – review age, material, size and capacity to adequately deliver non-potable water, and estimate remaining useful life of pipes.
   - System pressure – review adequacy of pressure for each connection
   - Telemetry Systems – review functionality and determine if upgrades or replacements are needed.
   - Private NPW systems – make site visit to two privately owned non-potable water systems and make recommendations for upgrades for the Town to assume maintenance responsibility.

8. **Water Quality and Treatment Review** – Forsgren will evaluate water quality test data for Milavec Reservoir, and make recommendations for treatment. The need for periodic flushing and/or chemical disinfection of the non-potable water transmission mains and irrigation pipes will also be reviewed. Water quality sampling and testing to be furnished by the Town.

9. **Evaluate Expansion of Non-Potable Water System** – Forsgren will evaluate expansion and upgrades to the existing non-potable water system. Expansion is expected to include:

   - New non-potable water transmission pipelines to future demand locations, including the Town's planned conversion of properties from potable to non-potable water
   - Upgrades to existing pump stations

- Locations for additional ponds at current and future non-potable water demand locations, based on proximity to irrigation ditches, and existing or planned non-potable waterlines
- Sizes for ponds and/or other non-potable water storage needed to work in conjunction with pumps, and to provide water during periods of low raw water availability
- Need for meter pits
- Trending technologies to improve water quality
- Telemetry and SCADA system upgrades to improve control and operations

10. **Hydraulic Model and Analyses -** The hydraulic model is a key analysis tool for this Master Plan. Forsgren will use WaterGEMS to develop a current and future conditions model. We will input updated GIS mapping data based on our survey. Town-furnished as-built drawings, known pipe sizes, existing pump curve data, and non-potable water usage data furnished by the Town will also be inputted into the model.

    Model Calibration **-** Forsgren will calibrate the steady-state model by comparing outputs to field measurements of flow and pressure, with appropriate adjustments to the model. Flow and pressure measurements will be performed by Town staff based on input and direction from Forsgren.

    **Hydraulic Model Analyses**

    *Current Conditions System Model*
    Using the steady-state calibrated model, Forsgren will run peak flow scenarios to identify areas of concern, such as low pressure or inadequate water flow.

    *Future Conditions System Model*
    The Future Conditions Model is a critical tool that will allow planning for ***sustainability*** with the goal that non-potable water system facilities will have capacity to meet both current and future water demands. The Town's plan to convert 18 potable water users to non-potable water will be incorporated into the model.

    Extended Period Simulation – After the steady-state model has been calibrated, we will perform an Extended Period Simulation (EPS) model to estimate NPW system pressures throughout the day.

11. **Community and Stakeholder Engagement** – We will participate in two public meetings for residents, businesses and others in the community to provide information. This could potentially be incorporated into the Town's Community Tour & Talks program.

    We will also join Town staff in discussions with the New Consolidated Lower Boulder Ditch Company to discuss plans for expansion of the Town's non-potable water use.

    We will provide information regarding the Master Plan progress for posting on the Town's website. There is an additional option to prepare an on-line survey platform using MetroQuest software for the public to take surveys and provide opinions and input.

**12. Review Town Design Standards and Policies**

It is important that the Town's Design Standards and Policies, especially those related to water facilities being constructed by developers, be in conformance with the Non-Potable Water Infrastructure Master Plan goals and recommendations. Forsgren will review the current design standards and policies and make recommendations to the Town for potential modifications. We will also review the Municipal Code and make recommendations for policies related to non-potable water.

**13. Preparation of Draft Master Plan Report**

Forsgren will prepare a draft of the Non-Potable Water Infrastructure Master Plan and present it to Town staff in a PowerPoint presentation, along with a copy of the report in electronic format (pdf). The report will include graphics to provide a visually appealing final product. The Master Plan will include:

- Background and methodology discussion
- Coordination with the Town's Water Efficiency and Water Supply Plans recommendations
- Condition Assessment of existing infrastructure
- Updated GIS mapping
- WaterGEMS model outputs
- Recommended infrastructure improvements in order of priority
- Maps of the existing non-potable water system and proposed capital improvement projects
- Opinions of probable project cost for projects planned for the first 5 to 7 years after the Master Plan is completed.
- 10-year Capital Improvements Plan
- General policy recommendations
- Story Map (ArcGIS format) summarizing the findings of the Master Plan, suitable for posting on the Town's website

Recommendations regarding the Town's Design Standards and specific policy recommendations for non-potable water infrastructure will be included in a separate memorandum.

**14. Presentations to Town Board**

After receiving feedback from Town staff on the draft Master Plan, Forsgren will make a StoryMap presentation summarizing the Master Plan to the Town Board, with additional handouts if needed.

We will incorporate feedback from the Town Board into the final version of the Master Plan, and submit a final version of the report to Town staff to confirm that comments have been addressed. We will then provide a StoryMap presentation of the final Master Plan to the Town Board.

**Master Plan Deliverables:**

- Updated GIS mapping

- WaterGEMS hydraulic model
- Electronic copy (pdf) of draft and final Non-Potable Water Infrastructure Master Plan
- 2 public engagement meetings
- 2 presentations to Town Board

### 15. Phase I Improvements

Based on discussions with Town staff, this Scope of Work assumes Phase I Improvements will be comprised of two parts: (1) the addition of two pumps at the West Pump Station; and (2) a new booster pump station. According to Town staff, the initial and most urgent need is to install two additional pumps at the West Pump Station to address low pressure issues. To accelerate the design process, Forsgren will prepare technical specifications only for this work, with no design drawings. Bid solicitation will be performed by Town staff.

**PART 1 - Phase I Improvements Engineering Services**

Scope of work – Existing West Pump Station - design two additional pumps to be installed on the existing pump skid. We understand the skid was designed to accommodate three pumps, but only one pump is installed.

Design Phase

1. Site visit to West Pump Station with Town staff
2. Review pump curve for existing pump (provided by Town)
3. Estimate flow and discharge pressure needed to meet approximate non-potable water demands for the West Pump station customers. The Town will provide Forsgren with required pressures for each NPW connection. Due to the Town's desire to install the additional pumps as soon as possible, estimates for non-potable water demand will be made prior to the completion of the non-potable water master plan with the information available at the time of design.
4. Perform calculations and/or hydraulic model to determine design flow and pressure for the pumps. Sizes and locations of existing non-potable distribution system piping is to be furnished by the Town.
5. Contact the pump manufacturer for recommended pump model and motor size.
6. Review existing electrical wiring diagrams (provided by the Town) and confirm the existing electrical system is sufficient to add two pumps.
7. Prepare technical specifications and submit to the Town.

Bidding and Construction Phase Assistance

1. Assist the Town staff with answering bidder and contractor questions during bidding and construction. (Bid document distribution to be performed by the Town staff.)
2. Assist the Town staff with issuing addenda during bidding.
3. Make one site visit during construction, if needed.

## **PART 2 - Phase I Improvements Engineering Services**

The full project scope for the remainder of recommended Phase I Improvements will be finalized during the Master Plan preparation. However, for the purpose of defining the basis for a fee, the *assumed scope* is to add a new booster pump station along Tipple Parkway, east of Colorado Boulevard. This scope of work will be modified if necessary after the recommendations of the Master Plan are finalized. At that time, an adjustment to the engineering fee may be needed, depending on the final scope of work.

It is assumed that the new booster pump station will include a minimally sized prefabricated building (Tuff Shed or similar) on a concrete foundation, with electric heat, lighting, and a ventilation fan. The booster pumps are assumed to be skid-mounted, with an integral electrical/control panel mounted on the skid. The electrical/control panel will be furnished by the pump skid supplier.

The booster pump station engineering services will include:

Design Phase

1. Site visit (note: general location of the booster pump station site will be identified during the Master Plan process, and the Town will select the precise location.)
2. Topographical survey (note: boundary survey or easement plat survey not included.)
3. Preliminary site layout drawing, submitted to Town for approval
4. 50% design drawings, submitted to the Town for review and approval
5. 90% design drawings, including structural design for the concrete foundation and electrical design, submitted to Town for review and approval
6. Telemetry system will be designed to provide pump operating status and system pressure data to connect to the Town's existing SCADA system. If the Town decides to upgrade the existing SCADA system, design work associated with selecting and specifying a new SCADA system will require a fee adjustment.
7. Final design plans, specifications and contract documents will be submitted to the Town.

Bidding Phase

1. Assist Town with Invitation to Bid. (Bid document distribution to be performed by the Town.)
2. Answer bidder questions and issue addenda if required. (Issuance of addenda by the Town.)
3. Review bids and prepare bid tabulation
4. Prepare award recommendation letter to the Town

Construction Phase

1. Provide engineering documents to support Contractor's building permit application or any other construction-related permits. All permits are assumed to be obtained by the Contractor.
2. Electrical service application and coordination for the booster pump building will be performed by the Contractor and the Town.
3. Review and respond to Requests for Information (RFIs).

4. Review shop drawing submittals.
5. Review Contractor Applications for Payment and make recommendations to the Town.
6. Review contractor change orders and make recommendations to Town.
7. Make up to three site visits during construction, anticipated to be prior to concrete placement, pump start-up, and substantial completion.
8. Prepare punch list after substantial completion site visit.

**Deliverables (PART 2 – Phase I Improvements)**

- Preliminary site layout
- 50% design plans
- 90% design plans
- Final design plans, specifications and contract documents
- Bid tabulation and recommendation
- Construction phase submittal and RFI reviews, punch list, and three site visits

**Fees:** Forsgren proposes to complete the work described for the following maximum not-to-exceed fees.

| | | |
|---|---|---|
| Master Plan | | $ 179,100 |
| Optional Master Plan Additional Services: | | |
| Web-based interactive public outreach (Metroquest software) | | $ 20,800 |
| **Master Plan – Grand Total, including optional additional services** | | **$199,900** |
| Phase I Improvements - Engineering – Part 1, West Pump Station | | $ 18,000 |
| Phase I Improvements – Part 2, Booster Pump Station | | |
| Design | $ 55,200 | |
| Bidding Support | $ 5,000 | |
| Construction Support | $ 11,500 | |
| Subtotal – Part 2 Eng. Services | $ 71,700 | |
| **Phase I Improvements – Engineering Services – Grand Total** | | **$ 89,700** |

Services provided under this Agreement, and any supplemental or expanded services authorized, will be charged at Forsgren's 2023 Title Code Rate Schedule (Attachment 1), subject to a 4% increase in billing rates on January 1, 2024 for work to be performed during 2024. Fee is based on the attached estimate (Attachment 2).

**Schedule:** Forsgren proposes to complete the Non-Potable Water Infrastructure Master Plan within 12 months of Notice to Proceed. Technical specifications for Part 1 of the Phase I Improvements are anticipated to be completed within two months after Notice to Proceed. The schedule for engineering services associated with the design, bidding and construction of Part 2 of the Phase I Improvements will be determined when the booster pump station site is selected and the non-potable water demands are determined through the Master Plan.

**Assumptions and Exclusions:**

1. Work not specifically listed in this Scope of Services is not included.
2. Evaluation and improvements to the onsite irrigation systems at each property are not included.
3. Survey for GPS map update is to be performed during the same survey mobilization for the booster pump station site survey (Phase I Improvements).
4. Scope and associated fees for the design, bidding and construction phases of Part 2 of the Phase I Improvements are based on locating a booster pump station along Tipple Parkway on Town-owned property. Agreement and contract amount will be amended if necessary after the scope of the improvements has been established during the Master Plan preparation.
5. Survey for the proposed booster pump station is limited to a topographical survey of the booster pump station site, and assumed to be no more than 10,000 square feet surveyed. Boundary survey or easement plat surveys are not included.
6. Assessments and analyses are limited to infrastructure owned by the Town of Frederick.
7. The Town will furnish documents and data listed in the Scope of Services.
8. Water quality testing sampling and costs will be provided by the Town and are not included.
9. Pumps and pipe material testing, or field testing of other existing infrastructure is not included.
10. Hydraulic model will be prepared using WaterGEMS software.
11. Field measurements (water flow and pressure) needed for calibration of the hydraulic model will be provided by the Town.
12. Meetings will include a combination of virtual and in-person meetings as described in the Scope of Services.
13. Review or analysis of the Town’s water rights portfolio is not included.
14. Review or analysis of the Town’s rates and fees is not included.
15. Proposed booster pump station - environmental assessments, environmental surveys, wetland surveys, or any other surveys or studies are not included.
16. Funding agency applications are not included.
17. Subsurface investigations or geotechnical testing and reports during design or construction are not included.
18. Building permit application for the booster pump station will be performed by the Contractor, including fees.
19. Electrical service application for the booster pump station will be performed by the Contractor and/or Town, including fees.
20. Coordination and approvals for the booster pump station building from the Town Parks & Open Space Department, Planning Department, and any other Town departments are not included.
21. Application or review fees, utility fees, or any other fees associated with booster pump station planning, design or construction are not included.

22. Bid invitation publication costs and distribution of bid documents will be performed by the Town.

**Subconsultants:** Forsgren plans to use the following subconsultants:

Vertex Consulting Services – Planning advisor

Wayne Eckas, P.E. – Water Resources Specialist

Barron Land LLC – GPS data collection for GIS mapping

Browns Hill Engineering & Controls – Electrical, SCADA and Controls

# ATTACHMENT 2

FORSGREN Associates Inc.

**Town of Frederick**
**Non-Potable Water Infrastructure Master Plan**
**Fee Estimate**
**04/04/23**

| TASK | DESCRIPTION | Engineer 8 Project Mgr W. Koger | Engineer 7 Asst Proj Mgr M. Waresak | Engineer 4 Sr. Engineer | CAD 4 | Engineer 6 Modeling N. Patterson | Engineer 3 GIS & Model Support | Engineer 5 Structural | CLE 5 | TOTAL HOURS | Subconsultants | EXPENSES | TOTAL FEES |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | $ 240 | $ 225 | $ 165 | $ 115 | $ 200 | $ 145 | $ 180 | $ 110 | | | | |
| **1.0** | **Project Set-up and Monthly Reporting** | | | | | | | | | | | | |
| 1.1 | Project set-up | 6 | 6 | | | | | | 4 | 16 | | | |
| 1.2 | Project Management Plan prep | 2 | 2 | 4 | | | | | 4 | 12 | | | |
| 1.3 | Project Reporting | 6 | 12 | | | | | | 12 | 30 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***14*** | ***20*** | ***4*** | ***0*** | ***0*** | ***0*** | ***0*** | ***20*** | **58** | | | |
| | **Subtotal =** | $3,360 | $4,500 | $660 | $0 | $0 | $0 | $0 | $2,200 | | | $50 | **$10,770** |
| **2.0** | **Meetings** | | | | | | | | | | | | |
| 2.1 | Project kickoff meeting & site visit tour | 8 | 8 | 8 | | | | | | 24 | $1,200 | | |
| 2.2 | Weekly project updates to Town (virtual meetings - avg 0.5 hr/ mtg) | 12 | 26 | | | | | | | 38 | | | |
| 2.3 | Public engagement meetings (2), including prep | 10 | 10 | 6 | 10 | | | | | 36 | | | |
| 2.4 | Meetings with Town Planning Department (2) - virtual | 3 | 3 | 3 | | | | | | 9 | | | |
| 2.5 | Meeting with Town Parks & Open Space Dept (1) - virtual | 1 | 1 | 1 | | | | | | 3 | $500 | | |
| 2.6 | Present draft Master Plan to Town staff | 4 | 4 | | | | | | | 8 | | | |
| 2.7 | Town Board presentations (2), including prep | 10 | 10 | 10 | 10 | | | | | 40 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***48*** | ***62*** | ***28*** | ***20*** | ***0*** | ***0*** | ***0*** | ***0*** | **158** | | | |
| | **Subtotal =** | $11,520 | $13,950 | $4,620 | $2,300 | $0 | $0 | $0 | $0 | | $1,700 | $500 | **$34,590** |
| **3.0** | **GIS Mapping update** | | | | | | | | | | | | |
| 3.1 | GPS points survey for existing valves | | 2 | | | | | | | 2 | $800 | | |
| 3.2 | Review of existing Town GIS file | | | 1 | | | 1 | | | 2 | | | |
| 3.3 | Update GIS mapping based on survey | | | 2 | | | 8 | | | 10 | | | |
| 3.4 | Submit updated GIS mapping to Town for review | | 1 | | | | | | | 1 | | | |
| 3.5 | Finalize updated GIS mapping | | 0 | 1 | | | 2 | | | 3 | | | |
| 3.6 | QC Review | | 1 | | | | | | | 1 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***0*** | ***4*** | ***4*** | ***0*** | ***0*** | ***11*** | ***0*** | ***0*** | **19** | | | |
| | **Subtotal =** | $0 | $900 | $660 | $0 | $0 | $1,595 | $0 | $0 | | $800 | $50 | **$4,005** |
| **4.0** | **Condition Assessment of Existing Infrastructure** | | | | | | | | | | | | |
| 4.1 | Review data | 1 | 2 | 8 | | | | | | 11 | | | |
| 4.2 | Pump stations condition assessment | | 4 | 8 | | | | | | 12 | | | |
| 4.3 | Pond bank erosion review | | 3 | 4 | | | | | | 7 | | | |
| 4.3 | Transmission piping condition assessment | | 4 | 8 | | | | | | 12 | | | |
| 4.3 | Telemetry system assessment | | 3 | 3 | | | | | | 6 | $2,000 | | |
| 4.4 | Review 2 private systems and identify upgrades needed | | 3 | 6 | | | | | | 9 | $1,000 | | |
| 4.5 | Prepare summary table of infrastructure assessment | | 1 | 4 | | | | | | 5 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***1*** | ***20*** | ***41*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | **62** | | | |
| | **Subtotal =** | $240 | $4,500 | $6,765 | $0 | $0 | $0 | $0 | $0 | | $3,000 | $100 | **$14,605** |
| **5.0** | **Water Quality and Treatment Review** | | | | | | | | | | | | |
| 5.1 | Review water quality data furnished by Town | 1 | 2 | 4 | | | | | | | | | |
| 5.2 | Identify treatment options | | 4 | 16 | | | | | | | $1,000 | | |
| 5.3 | Contact treatment equipment vendors for technical & cost input | | 1 | 8 | | | | | | | | | |
| 5.4 | Finalize treatment recommendations | 1 | 4 | 8 | | | | | | | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***2*** | ***11*** | ***36*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | **49** | | | |
| | **Subtotal =** | $480 | $2,475 | $5,940 | $0 | $0 | $0 | $0 | $0 | | $1,000 | $100 | **$9,995** |
| **6.0** | **Hydraulic Model Update & Analyses** | | | | | | | | | | | | |
| 6.1 | Prepare WaterGEMS model based on GIS mapping | | 2 | 2 | | 2 | 8 | | | 14 | | | |
| 6.2 | Input pump curve data for West and East Pump Stations | | | 2 | | 1 | 4 | | | 7 | | | |
| 6.3 | Input existing irrigation demands for each user (from Town) | | 1 | 2 | | 1 | 4 | | | 8 | | | |
| 6.4 | Run uncalibrated base model update | | | 1 | | 1 | 1 | | | 3 | | | |

# ATTACHMENT 2

| | | Engineer 8 Project Mgr W. Koger | Engineer 7 Asst Proj Mgr M. Waresak | Engineer 4 Sr. Engineer | CAD 4 | Engineer 6 Modeling N. Patterson | Engineer 3 GIS & Model Support | Engineer 5 Structural | CLE 5 | TOTAL HOURS | Subconsultants | EXPENSES | TOTAL FEES |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 6.5 | Coordinate model calibration field work by Town | | 1 | 1 | | | 1 | | | 3 | | | |
| 6.6 | Calibrate steady state model | | 1 | 3 | | 2 | 16 | | | 22 | | | |
| 6.7 | Run peak flow scenarios, identify pressure/flow issues | | 2 | 6 | | 2 | 12 | | | 22 | | | |
| 6.8 | Produce summary report and map for base model | 1 | 2 | 2 | | 2 | 2 | | | 9 | | | |
| | *Future Conditions Model (Steady state):* | | | | | | | | | | | | |
| 6.9 | Add planned waterline upgrades, extensions and loops to model | 1 | 3 | 8 | | 1 | 8 | | | 21 | | | |
| 6.10 | Input future water demands, incl. for future developments | 1 | 2 | 8 | | 1 | 16 | | | 28 | $500 | | |
| 6.11 | Add booster pump station and re-run model | | 1 | 2 | | 1 | 4 | | | 8 | | | |
| 6.12 | Run peak flow scenarios, identify pressure/flow issues | | 2 | 2 | | 1 | 8 | | | 13 | | | |
| 6.13 | Run additional scenarios based on input from Town staff | | 2 | 4 | | 1 | 8 | | | 15 | | | |
| 6.14 | Prepare summary report and map for future conditions | 1 | 8 | 8 | | 2 | 16 | | | 35 | | | |
| | *Extended Period Simulation* | | | | | | | | | | | | |
| 6.15 | Input anticipated irrigation time periods for each user | 1 | 2 | 4 | | 2 | 8 | | | 17 | | | |
| 6.16 | Run EPS and evaluate flows and pressures at each connection | | 2 | 4 | | 2 | 8 | | | 16 | | | |
| 6.17 | Adjust irrigation times and pump outputs and rerun model | | 2 | 6 | | 4 | 16 | | | 28 | | | |
| 6.18 | QC Review | 1 | | | | 4 | | | | 5 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***6*** | ***33*** | ***65*** | ***0*** | ***30*** | ***140*** | ***0*** | ***0*** | **274** | | | |
| | **Subtotal =** | $1,440 | $7,425 | $10,725 | $0 | $6,000 | $20,300 | $0 | $0 | | $500 | $100 | **$46,490** |
| **7.0** | **Review of Town Design Standards and Policies** | | | | | | | | | | | | |
| 7.1 | Review current Town Design Standards and Policies | 4 | 8 | 4 | | | | | | 16 | $1,000 | | |
| 7.2 | Prepare recommendations for revisions to standards & policies | 4 | 8 | 8 | | | | | | 20 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***8*** | ***16*** | ***12*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | **36** | | | |
| | **Subtotal =** | $1,920 | $3,600 | $1,980 | $0 | $0 | $0 | $0 | $0 | | $1,000 | | **$8,500** |
| **8.0** | **Master Plan preparation** | | | | | | | | | | | | |
| 8.1 | Review locations for additional ponds | 2 | 4 | 8 | | | | | | | $1,000 | | |
| 8.2 | Planning coordination and reviews, including planner subconsult. | 1 | 1 | 1 | | | | | | 3 | $8,400 | | |
| 8.3 | Background and general sections | | 1 | 6 | | | | | | 7 | | | |
| 8.4 | Condition assessment writeup | | 1 | 4 | | | | | | 5 | | | |
| 8.5 | Evaluate pond storage capacities | | 2 | 8 | | | | | | 10 | $1,000 | | |
| 8.6 | Hydraulic modeling writeup | | 1 | 8 | | | | | | 9 | | | |
| 8.7 | Remainder of narratives for master plan report | | 1 | 24 | | | | | | 25 | $1,200 | | |
| 8.8 | Master plan graphics | 2 | 2 | 4 | 16 | | | | 8 | 32 | | | |
| 8.9 | Identify projects for 5-10 yr capital improv plan | 2 | 2 | 4 | | 1 | | | | 9 | $3,000 | | |
| 8.10 | Prepare project cost estimates for first 5 years | | 4 | 24 | | | | | | 28 | | | |
| 8.11 | Assemble draft report and submit to Town | 1 | 1 | 4 | | | | | | 6 | | | |
| 8.12 | Finalize report after input from Town staff and Board | 2 | 2 | 12 | 4 | | | | | 20 | | | |
| 8.13 | Story Map prep | 2 | 4 | 8 | | | | | 12 | 26 | | | |
| 8.14 | QC Review | 8 | | | | | | | | 8 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***20*** | ***26*** | ***115*** | ***20*** | ***1*** | ***0*** | ***0*** | ***20*** | **202** | | | |
| | **Subtotal =** | $4,800 | $5,850 | $18,975 | $2,300 | $200 | $0 | $0 | $2,200 | | $13,600 | $200 | **$48,125** |
| | | | | | | | | | | | | | |
| | | | | | | | | | | | | | |
| 2024 Rate Adj | Est. 2024 Rate Adjustment | | | | | | | | | | | | **$2,000** |
| | | | | | | | | | | | | | |
| | **Total Hours =** | **99** | **192** | **305** | **40** | **31** | **151** | **0** | **40** | **545** | | | |
| | **Total (Master Plan) =** | **$23,760** | **$43,200** | **$50,325** | **$4,600** | **$6,200** | **$21,895** | **$0** | **$4,400** | | **$21,600** | **$1,100** | **$179,100** |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **9.0** | **PART 1 - Phase I Improvements - Design, Bid & Constr** | | | | | | | | | | | | |
| 9.1 | Site visit , pre-design (1) | | | 4 | | | | | | 4 | | | |
| 9.2 | Review pump curve & mfr info, identify current and future demands | | 2 | 8 | | | | | | 10 | | | |
| 9.3 | Design calculations and pump design requirements | 1 | 2 | 8 | | | | | | 11 | | | |
| 9.4 | Coordinate with pump manufacturer for pump selection | | 2 | 4 | | | | | | 6 | | | |
| 9.5 | Electrical design | | 1 | 3 | | | | | | 4 | $6,700 | | |
| 9.6 | Technical specifications | 1 | 3 | 12 | | | | | | 16 | | | |
| 9.7 | Assist Town with bidder & contractor questions for construction | 1 | 2 | 4 | | | | | | 7 | | | |
| 9.8 | Site visit (1) during construction | | | 4 | | | | | | 4 | | | |
| | | | | | | | | | | | | | |
| | **Hours =** | ***3*** | ***12*** | ***47*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | **62** | | | |

# ATTACHMENT 2

| | | Engineer 8 Project Mgr W. Koger | Engineer 7 Asst Proj Mgr M. Waresak | Engineer 4 Sr. Engineer | CAD 4 | Engineer 6 Modeling N. Patterson | Engineer 3 GIS & Model Support | Engineer 5 Structural | CLE 5 | TOTAL HOURS | Subconsultants | EXPENSES | TOTAL FEES |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **PART 1 - Phase I Improvements Total =** | $720 | $2,700 | $7,755 | $0 | $0 | $0 | $0 | $0 | | $6,700 | $100 | **$18,000** |
| | | | | | | | | | | | | | |
| **10.0** | **PART 2 - Phase I Improvements - Design, Bid & Constr** | | | | | | | | | | | | |
| | *Design Services* | | | | | | | | | | | | |
| 9.1 | Site visit , pre-design (1) | | | 4 | | | | | | 4 | | | |
| 9.2 | Topographical Survey | | 1 | 1 | | | | | | 2 | $3,500 | | |
| 9.3 | Confirm user demands based on master plan & hydraulic model | | 2 | 4 | | | 4 | | | 10 | | | |
| 9.4 | Preliminary site layout | | 1 | 4 | 8 | | | | | 13 | | | |
| 9.5 | Design calculations and pump design requirements | | 1 | 8 | | | | | | 9 | | | |
| 9.6 | Coordinate with pump manufacturer for pump skid selection | | 1 | 8 | | | | | | 9 | | | |
| 9.7 | 50% design drawings (site plan, building plan, building elevation) | 1 | 2 | 8 | 24 | | | | | 35 | | | |
| 9.8 | Electrical & telemetry system design (2 sheets) | | 2 | 6 | | | | | | 8 | $8,000 | | |
| 9.9 | 90% design, including structural (5 sheets plus cover & details) | 1 | 16 | 48 | 48 | | | 4 | | 117 | | | |
| 9.10 | Technical specifications & bid documents | 1 | 4 | 16 | | | | | | 21 | | | |
| 9.11 | Final design plans and bid documents based on Town review | 3 | 4 | 16 | 24 | | | | | 47 | | | |
| | **(Design) Hours =** | ***6*** | ***34*** | ***123*** | ***104*** | ***0*** | ***4*** | ***4*** | ***0*** | **275** | | | |
| | **Part 2 - Design - Subtotal =** | $1,440 | $7,650 | $20,295 | $11,960 | $0 | $580 | $720 | $0 | | $11,500 | $100 | **$54,300** |
| | | | | | | | | | | | | | |
| | *Bidding Assistance Services* | | | | | | | | | | | | |
| 9.12 | Assist Town with bidder & contractor questions for construction | | 1 | 6 | | | | | | 7 | | | |
| 9.13 | Assist Town with bidder questions & issue addenda if required | 1 | 1 | 8 | 1 | | | | | 11 | | | |
| 9.14 | Review bids, and prepare bid tabulation | | 1 | 3 | | | | | | 4 | | | |
| 9.15 | Prepare recommendation letter and submit to Town | 1 | 1 | 3 | | | | | | 5 | | | |
| | **(Bidding Phase) Hours =** | ***2*** | ***4*** | ***20*** | ***1*** | ***0*** | ***0*** | ***0*** | ***0*** | **27** | | | |
| | **Part 2 - Bidding Assistance - Subtotal =** | $480 | $900 | $3,300 | $115 | $0 | $0 | $0 | $0 | | $0 | | **$4,800** |
| | | | | | | | | | | | | | |
| | *Construction Support Services* | | | | | | | | | | | | |
| 9.16 | Engineering documents to support contractor's building permit appl | | 2 | 4 | | | | | | 6 | | | |
| 9.17 | Review and respond to Requests for Information (RFI's) | 1 | 2 | 8 | | | | | | 11 | | | |
| 9.18 | Review contractor submittals | 1 | 2 | 8 | | | | | | 11 | | | |
| 9.19 | Review contractor applications for payment | | 1 | 4 | | | | | | 5 | | | |
| 9.20 | Review contractor change order proposals and make recommend. | 1 | 3 | 4 | | | | | | 8 | | | |
| 9.21 | Site visits (3) at pre-concrete pour, pump startup, substantial compl. | | 4 | 8 | | | | | | 12 | | | |
| 9.22 | Prepare punch list after substantial completion site visit | 1 | 2 | 2 | | | | | | 5 | | | |
| | | | | | | | | | | | | | |
| | **(Construction Phase) Hours =** | ***4*** | ***16*** | ***38*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | **58** | | | |
| | **Part 2 - Construction Support - Subtotal =** | $960 | $3,600 | $6,270 | $0 | $0 | $0 | $0 | $0 | | $0 | $300 | **$11,100** |
| | | | | | | | | | | | | | |
| 2024 Rate Adj | Est. 2024 Rate Adjustment - Design Services | | | | | | | | | | | | **$900** |
| 2024 Rate Adj | Est. 2024 Rate Adjustment - Bidding & Construction Phase services | | | | | | | | | | | | **$600** |
| | | | | | | | | | | | | | |
| | **Part 2 - Phase I Improvements - Hours =** | ***12*** | ***54*** | ***181*** | ***105*** | ***0*** | ***4*** | ***4*** | ***0*** | **360** | | | |
| | **PART 2 - Phase I Improvements Total =** | $2,880 | $12,150 | $29,865 | $12,075 | $0 | $580 | $720 | $0 | | $11,500 | $400 | **$71,700** |
| | | | | | | | | | | | | | |
| **10.0** | **Optional Additional Work** | | | | | | | | | | | | |
| 10.1 | Web-based public engagement (Metroquest) | | | | | | | | | 0 | $20,800 | | $20,800 |
| | | | | | | | | | | | | | |
| | **Hours =** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | ***0*** | **0** | | | |
| | **Optional Work Subtotal =** | $0 | $0 | $0 | $0 | $0 | $0 | $0 | $0 | | $20,800 | $0 | **$20,800** |

**TOWN OF FREDERICK, COLORADO**
**RESOLUTION NO. 23-R-21**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, TO AWARD A CONTRACT FOR CREATION OF A NON-POTABLE WATER INFRASTRUCTURE MASTER PLAN AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT**

**WHEREAS,** in accordance with Chapter 4 Article V, the Town is not required to seek bids for technical and professional services, notwithstanding the Town issued a Request for Qualifications and interviewed several firms for the Non-Potable Water Infrastructure Master Plan; and,

**WHEREAS,** the Board of Trustees finds that the preferred consultant for this contract award is Forsgren Associates Inc.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:**

**1.** The Board of Trustees accepts the bid of Forsgren Associates, Inc. in the amount of $199,900 as the preferred consultant on the Non-Potable Water Infrastructure Master Plan project as reflected in the accompanied Action Memorandum and authorizes the Town Manager to sign a contract, subject to finalization and review by the Town Attorney that is substantively the same as the attached Exhibit A.

**INTRODUCED, READ, PASSED, AND SIGNED THIS 11TH DAY OF APRIL, 2023.**

**TOWN OF FREDERICK**

By: ______________________________
Tracie Crites, Mayor

**ATTEST:**
By: ______________________
Meghan C. Martinez, MMC, Town Clerk

# TOWN OF FREDERICK
# Board of Trustees
# Action Memorandum



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## Consideration of Award for the Design Contract of the Silver Birch Boulevard and Bella Rosa Parkway Intersection Improvement

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**Agenda Date:** Town Board Meeting – April 25, 2023

**Attachments:**
a. J-U-B Engineers – Contract
Silver Birch Blvd and Bella Rosa Pkwy Intersection Improvement
b. Project Overview – Concept Plans
c. Resolution 23-R-22

**Finance Review:** ____________________________
Administrative Services

**Submitted by:** Jason Berg
Civil Engineer

**Approved for Presentation:** Bryan Ostler
Town Manager

☐ Quasi-Judicial ☐ Legislative ☐ Administrative

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**Strategic Plan Alignment:**

Strategic, Reliable & Sustainable Infrastructure: This request aligns with the Town's Strategic Plan by investing in existing and future transportation.

**Summary Statement:**

Statements of Qualification for the design of the Silver Birch Boulevard and Bella Rosa Parkway Intersection Improvement project were opened on March 17, 2023 and staff is providing a recommendation for the award of this project to the most qualified consultant.

**Detail of Issue/Request:**

One of the key short-term strategies of the Town of Frederick Transportation Master Plan (TMP) were recommendations focused on improved intersection operations and added capacity at priority corridors. With this the intersection of Silver Birch Boulevard and Bella Rosa Parkway was recognized as a Tier-3 Short Term project, which are intersections identified for operational improvements and widening for high priority turn lanes. Additionally, the TMP Planning Action Committee (PAC) identified the Silver Birch Boulevard and Bella Rosa Parkway intersection as the third highest area of need in Town.

The design effort for the Silver Birch Boulevard and Bella Rosa Parkway intersection improvement will include a phased approach with the ultimate design configuration as well as an interim intersection configuration for construction. The ultimate intersection configuration will include the installation of additional auxiliary acceleration and deceleration turn lanes, striping, signage and new traffic signals with ADA curb ramps sidewalk connections and pedestrian crossing controls for increased multimodal public safety and improved drainage infrastructure including curb and gutter. The interim intersection configuration will include left turn auxiliary lanes and right turn auxiliary acceleration and deceleration lanes as warranted, striping, signage and new traffic signals as well as improved drainage infrastructure. With the current undeveloped nature of the project location and no connecting pedestrian infrastructure in the proximity; 0.4-mile to Grand Mesa Avenue/Fox Run Boulevard to the east, 0.5-mile to Bobcat Street to the south and 0.8-miles to Neighbors Parkway to the north curb ramps, sidewalk and crossing controls are removed from the interim design. Upon future development the ultimate design with these items can be provided to the developer for implementation.

On February 20, 2023 the Town solicited qualifications-based proposals from design firms for this project. Eleven firms submitted proposals which were reviewed by Town engineering staff and the firm of J-U-B Engineers received the highest average score in a competitive evaluation process and contract negotiations are now finalized.

**Legal Comments:**

The Town Attorney has drafted the resolution.

**Alternatives/Options:**

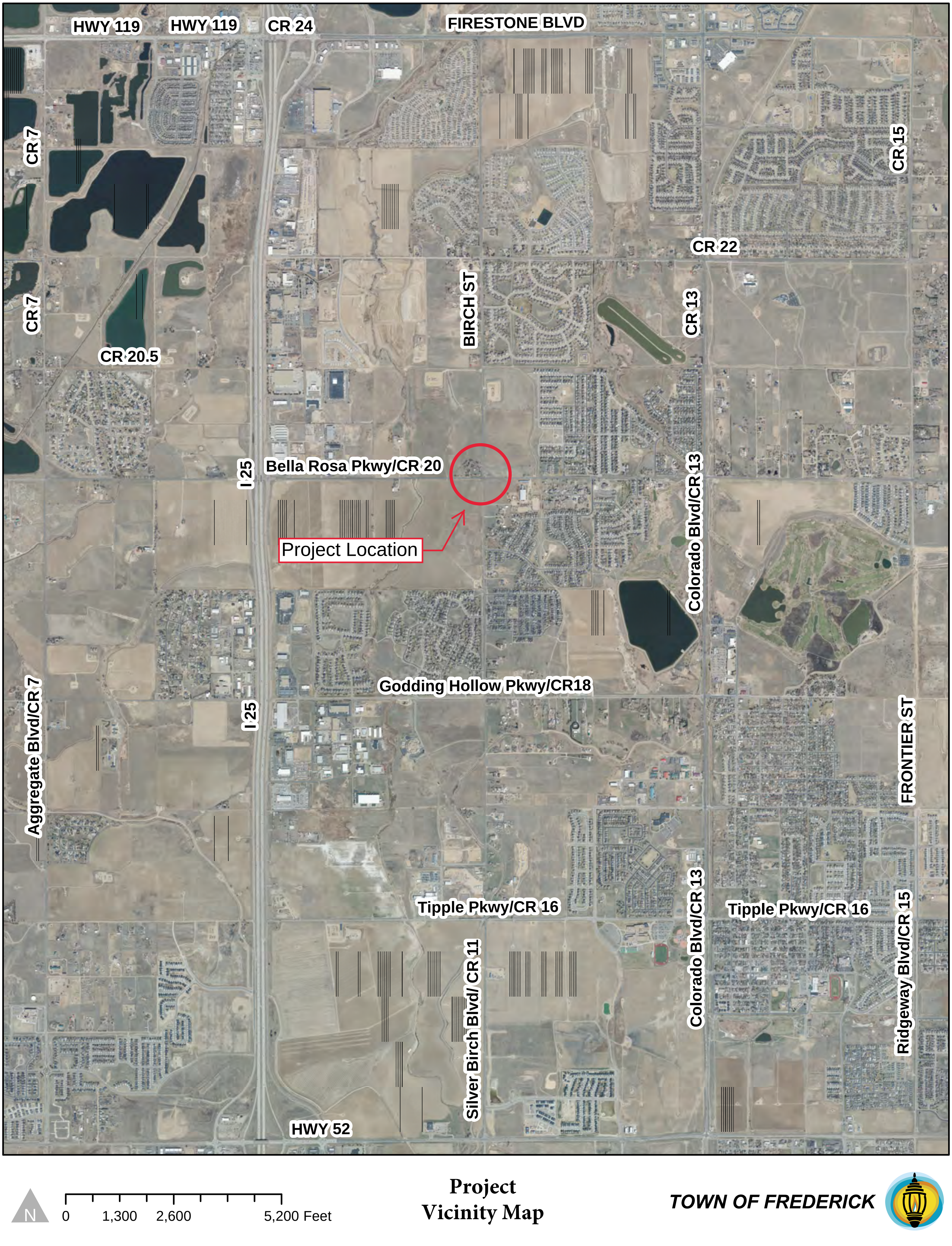
The Town has the option of awarding the contract for this work, to reject any and all negotiated scope and fee and not proceed with the Silver Birch Boulevard and Bella Rosa Parkway Intersection Improvement project this year, or re-bid a different contract scope with budgeted funds.

**Financial Considerations:**

The contract amount for the design services of J-U-B Engineers as part of the Silver Birch Boulevard and Bella Rosa Parkway Intersection Improvement project is $339,832. The Capital Improvement Project (CIP) Fund has budgeted amount of $300,000 to cover the design services of this project.

**Staff Recommendation:**

Staff recommends that the Board award the contract and approve Resolution 23-R-22.




# Project Vicinity Map

TOWN OF FREDERICK


Conceptual Ultimate Intersection Improvement
Silver Birch Boulevard and Bella Rosa Parkway
Frederick, Colorado

Town of Frederick
Engineering Dept.

Project:

Silver Birch Blvd &
Bella Rosa Pkwy
Intersection Improvement

02/02/2023

Not to Scale

1


Conceptual Interim Intersection Improvement
with Left Turn Lanes
Silver Birch Boulevard and Bella Rosa Parkway
Frederick, Colorado

Town of Frederick
Engineering Dept.

Project:

Silver Birch Blvd &
Bella Rosa Pkwy
Intersection Improvement

02/02/2023

Not to Scale

3


Conceptual Interim Intersection Improvement
with Left and Right Turn Lanes
Silver Birch Boulevard and Bella Rosa Parkway
Frederick, Colorado

Town of Frederick
Engineering Dept.

Project:

Silver Birch Blvd &
Bella Rosa Pkwy
Intersection Improvement

02/02/2023

Not to Scale

2

**TOWN OF FREDERICK, COLORADO**
**RESOLUTION NO. 23-R-22**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, TO AWARD A CONTRACT FOR THE DESIGN CONTRACT OF THE SILVER BIRCH AND BELLA ROSA INTERSECTION IMPROVEMENT PROJECT AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT**

**WHEREAS,** in accordance with Chapter 4 Article V, the Town has solicited bids for the Design Contract of the Silver Birch Boulevard and Bella Rosa Parkway Intersection Improvement Project; and,

**WHEREAS,** the Board of Trustees finds that the lowest responsible bidder for this contract award is J-U-B Engineers.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:**

**1.** The Board of Trustees accepts the bid of J-U-B Engineers in the amount of $339,832 as the lowest responsible bid for the Design Contract of the Silver Birch Boulevard and Bella Rosa Parkway Intersection Improvement Project as reflected in the accompanied Action Memorandum and authorizes the Town Manager to sign a contract, subject to finalization and review by the Town Attorney that is substantively the same as the attached Exhibit A.

**INTRODUCED, READ, PASSED, AND SIGNED THIS 25TH DAY OF APRIL, 2023.**

**TOWN OF FREDERICK**

By: ____________________________________________
Tracie Crites, Mayor

**ATTEST:**
By: ____________________________
Meghan C. Martinez, MMC, Town Clerk

# TOWN OF FREDERICK
# Board of Trustees
# Action Memorandum



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**Consideration of the Prosperity Subdivision Landscape Wavier**

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**Agenda Date:** Town Board Meeting – April 25, 2023

**Attachments:**
a. Letter of Intent
b. Landscape typical layouts
c. Water demand analysis
d. Prosperity covenants, conditions and restrictions

**Finance Review:** ______________________
Administrative Services

**Submitted by:** Ali van Deutekom
Planning Manager

**Approved for Presentation:** Bryan Ostler
Town Manager

☒ Quasi-Judicial ☐ Legislative ☐ Administrative

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**Summary Statement:**

The applicant is requesting a waiver from Land Use Code Section 2.14(7)(b) which is the single-family residential landscaping development standards.

**Strategic Plan Alignment:**

This request aligns with the Town's Strategic, Reliable & Sustainable Infrastructure– Frederick is dedicated to investing in existing and future transportation, water, storm water, and technology while planning for sustainable growth and development.

**Detail of Issue/Request:**

**Applicant:** Richard Jablonski

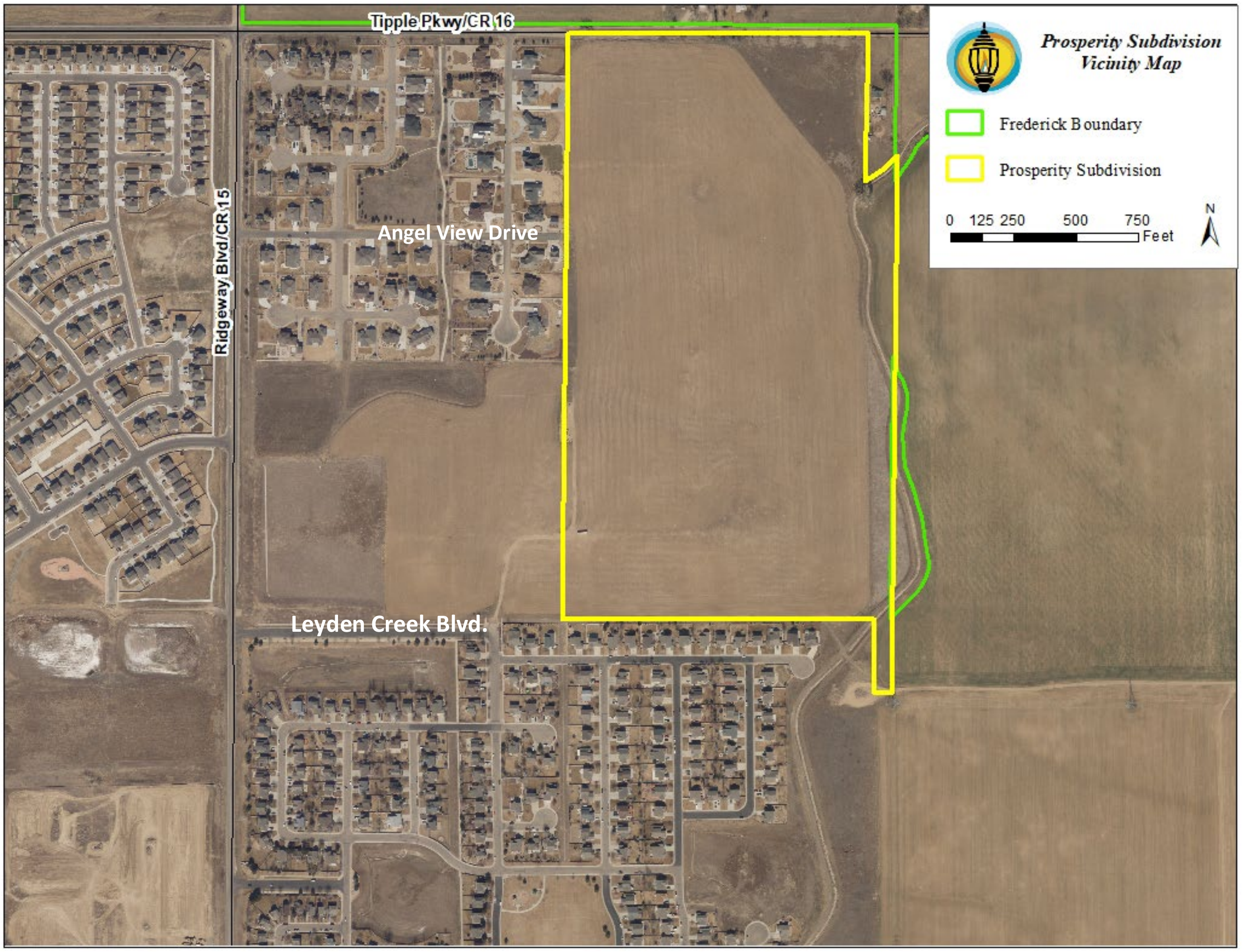
**Owner:** Jablonski Family LLLP

**Location and Zoning:** The property is generally located south of Tipple Parkway, a quarter mile east of Ridgeway Blvd, a half mile north of Highway 52 and a half mile west of Wheatland Blvd. The Zoning is R-1 (residential low density).

**Surrounding Land Uses and Zoning:**

| | |
|---|---|
| North | Land use: single family dwelling<br>Zoning: Weld County Ag (Agricultural) |
| South | Land use: single family dwellings (Savannah Subdivision)<br>Zoning: R-1 (residential low density) |
| West | Land use: single family dwellings (Angel View Estates Subdivision)<br>Zoning: R-1 (residential low density) |
| East | Land use: vacant land/ single family dwelling<br>Zoning: R-1 (residential low density) with a PUD overlay and Weld County Ag (Agricultural) |

**Vicinity Map:**




**Background Information:**

On September 14th, 2021 the Board of Trustees approved the Prosperity final plat for 206 single family detached lots, and a 4-acre neighborhood park, on 69.78 acres. The average lot size in the subdivision is 7,000-8,000 square feet. A final landscape plan was reviewed and approved with the final plat, which meets our current Land Use standards. Our Land Use Code section 2.14(7)(b) lays out single-family residential landscaping development standards which require no less than 50% coverage in drought tolerant turf grass within the front and side yard of a lot. Section 2.14(7)(b) also limits the amount of decorative rock or gravel mulch to no more than 15% of the landscaped area.

**Request:**

The applicant is requesting a 3-part waiver with their letter of intent. They are requesting the Town accept the proposed typical lot landscape plans, a water demand analysis and the declaration of covenants, conditions and restrictions.

Staff is in full support of the proposed typical lot landscape plans. The applicant is proposing a maximum turf area of 200 square feet and no minimum requirement. With the possibility of no turf and in order to avoid large expansions of organic mulch, the 15% maximum placed on rock mulch should also be waived. Staff can support this request based on the 2022 adopted Water Efficiency Plan. The water efficiency plan collected historic use data and showed us some striking numbers. 75.3% of the Town's potable water is directed at single family homes. Of the 75% used by single family homes, it is estimated that 57% is used outdoors. It is likely the outdoor use is on large expansions of turf. Staff is working to update the Land Use Code landscape requirements to better align with the water efficiency plan. In the meantime, staff offered to support a wavier request to reduce turf usage.

A water demand analysis is not supported by staff because it does not meet the requirements of Chapter 13 of the Municipal Code. The code requires that the analysis be prepared by Town Staff. The Developer has not used the standard values that Town staff would use to prepare the analysis and the values used are not supported by staff. The Engineering Department has been working on a Municipal Code update that will be changing the water dedication requirements in addition to other sections of the Code. These changes will be proposed to the Board in a work session to collect feedback from the Board.

The final piece of the request is the acceptance of the covenants, conditions and restrictions for the subdivision. While staff believe this is the appropriate tool to ensure the individual lot owners comply with the lot typical, the Town does not review, approve or enforce these documents. Staff wants to be clear; the subdivision HOA will be enforcing these restrictions through plan review final inspection and ongoing inspections. No Town resources shall be used to ensure the plans are carried out for the duration of the subdivision.

**Review Criteria:**

Section 4.7.8 of the Town of Frederick Land Use Code sets forth the following review criteria for the proposed planning action.

1. The waiver, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor diminish the value, use or enjoyment of adjacent property.

2. The waiver, if granted, is the minimum variance that will afford relief and is the least modification possible of the subdivision ordinance provisions which are in question.

3. Such practical difficulties or unnecessary hardships have not been created by the applicant.

Staff Comment: Staff believes the wavier request for the landscaping requirements is in line with the policy direction within the Town's adopted water efficiency plan. The proposed changes may increase the value of the homes as more consumers search for housing options which cost less to maintain and require less water. The character of the neighborhood should remain intact.

**Legal Comments:**

The application has been reviewed by the Town Attorney.

**Alternatives/Options:**

**Approval**:
I move that the Prosperity Waiver, case no. 2022-021 be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, with no conditions; and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

**Approval with Conditions:**
I move that Prosperity Waiver, case no. 2022-021 be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, and based on the following conditions;
1. (list specific conditions)
2…
3…
and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

**Denial:**
I move that Prosperity Waiver, case no. 2022-021 be denied based on the following findings of fact (list specific facts); and to direct the Town Attorney to reduce this denial, along with the findings of fact, to writing for prompt execution by Mayor Crites without further action of the Board.

**Financial Considerations:**

Not Applicable.

**Staff Recommendation:**

Staff recommend approval of the wavier to the single-family residential landscaping development standards, section 2.14(7)(b) with conditions.

I move that Prosperity Waiver, case no. 2022-021 be approved based on the review criteria found in the Town Land Use Code Section 4.9.4, and based on the following conditions;
1. The Town does not accept the water demand analysis submitted with the waiver request.
2. The Town does not provide an approval of the covenants, conditions and restrictions submitted with the waiver request.
and to direct the Town Attorney to memorialize this approval as a resolution for prompt execution by Mayor Crites without further action of the Board.

**JABLONSKI FAMILY, LLLP**
**1710 BEARD CREEK TRAIL**
**EDWARDS, COLORADO 81632**

Bryan Ostler, Town Manager
Town of Frederick
401 Locust Street
Frederick, Colorado 80530-0435

RE: ***Prosperity Subdivision – Updated Landscape Plans***

Dear Mr. Ostler:

Greetings. In response to your letter dated May 20, 2022, enclosed please find the following draft materials for your review and consideration:

- Typical Lot Landscape Plans
- Water Demand Analysis
- Declaration of Covenants, Conditions and Restrictions (with Exhibits)

Pursuant to the approved Final Plat, Prosperity Subdivision has a mix of residential Lot sizes, ranging between 6,300 s.f. and 8,000 s.f. According to the updated Lot landscaping plans (enclosed), outdoor turf area shall be restricted to a maximum of 1,200 s.f. per Lot, and additional landscape requirements and irrigation restrictions will substantially reduce outdoor irrigation demand.

In addition, the updated Lot landscape plans are accompanied by corresponding covenant restrictions in the revised Declaration of Covenants (see, Articles 5, 7 and 14), and the Developer would also be willing to complete an administrative Plat amendment to clearly restate all Lot landscaping requirements and outdoor irrigation restrictions for the Subdivision.

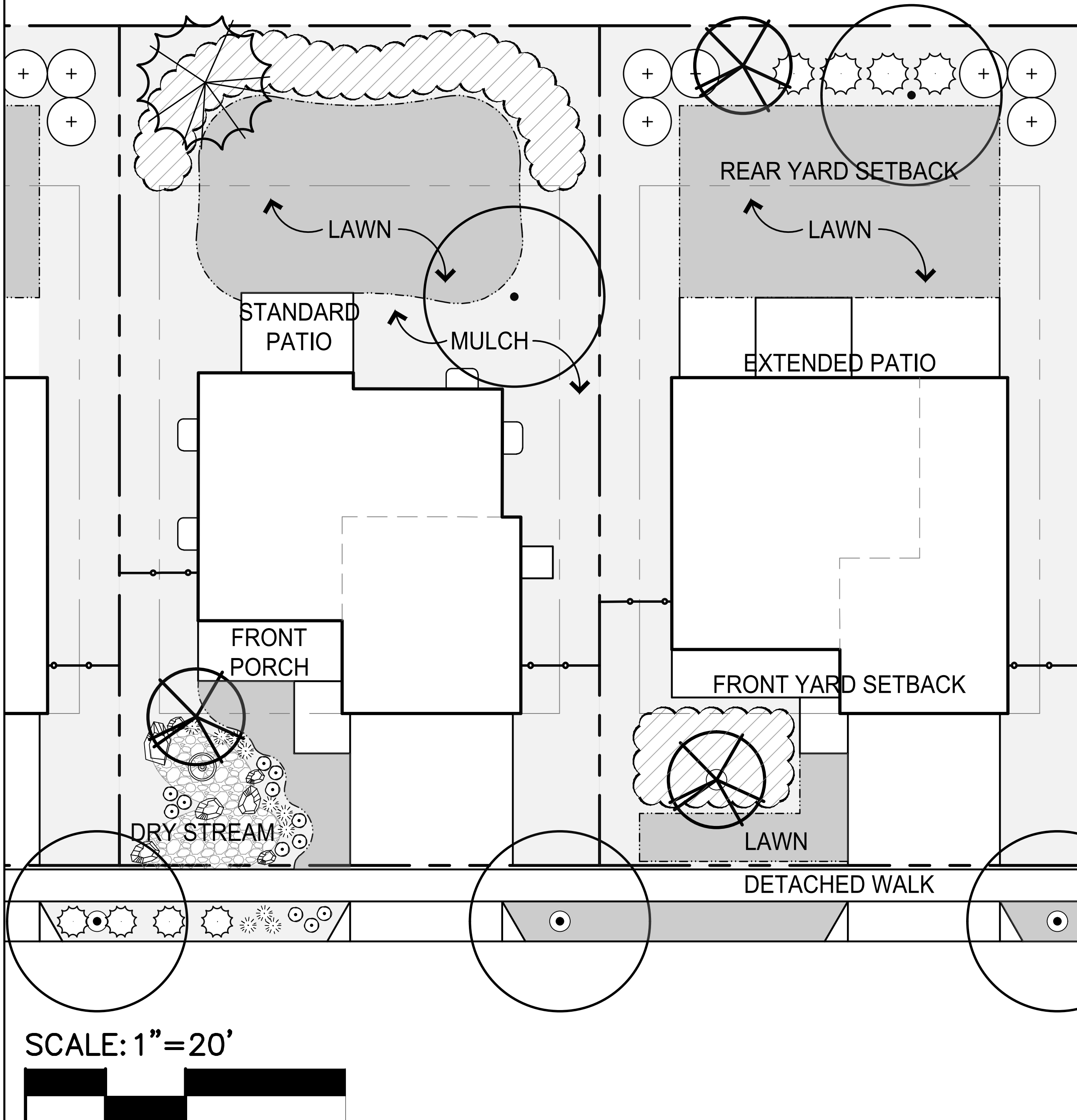
You advised that the Town Code does not currently provide a process for alternatives to the Town's established landscape requirements. Therefore, you suggested that we prepare and submit these materials and request a waiver. As justification, we also enclose our water demand analysis showing measurably reduced water consumption in the Subdivision, using the updated Lot landscape plans. As before, our goals align with the Town's to measurably reduce water consumption.

Please contact me to discuss the enclosed plans and documents, and to schedule a date for the Town Board of Trustees to consider this waiver request. We hope that the Town would look favorably on the request, and we thank you for your professional assistance.

Jablonski Family, LLLP
A Colorado limited liability limited partnership

Richard T. Jablonski, General Partner

Enclosures




PROSPERITY LANDSCAPE PLAN TYPICAL
60' x 105' LOT

REAR YARD LANDSCAPE REQUIREMENTS:
NONE LISTED IN FREDERICK LAND USE CODE

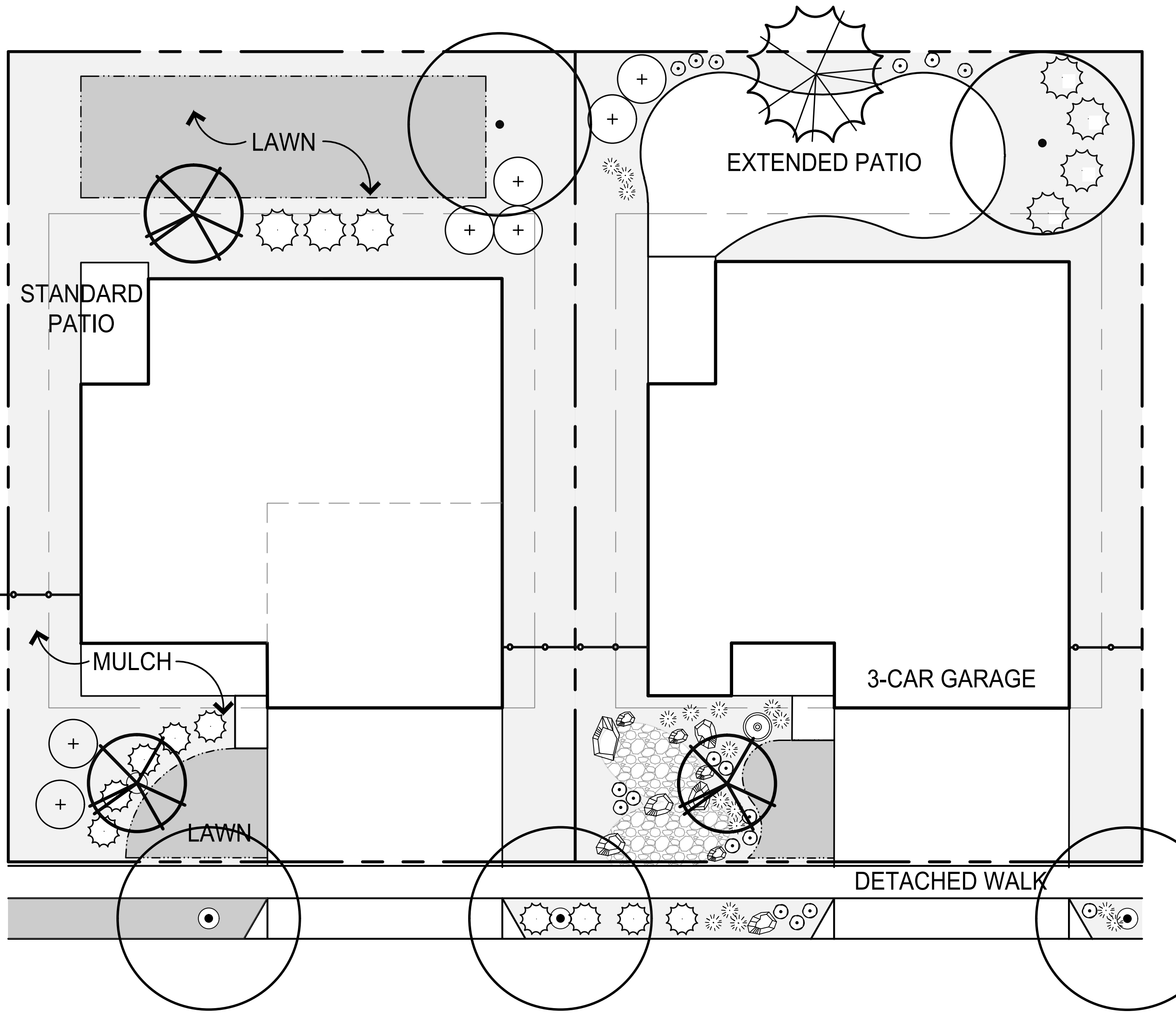
PROPOSED:
ALL LOW WATER USE PLANT MATERIAL INCLUDING BUFFALO GRASS OR TAHOMA TURF OR APPROVED EQUAL
- 1,000 SF MAX. TURF
- 1 SHADE TREE MIN.
- 1 EVERGREEN OR ORNAMENTAL TREE MIN.
- 6 SHRUBS MIN.

FRONT YARD LANDSCAPE REQUIREMENTS:
PER FREDERICK LAND USE CODE:
1 STREET TREE PER 40 LINEAR FEET

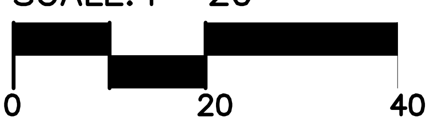
R-1 ZONING FRONT YARD SETBACK:
50% MIN. TURF;
25% MIN. LIVE PLANT MATERIAL;
15% MAX. GRAVEL;
5 SHRUBS MIN.
1 TREE MIN.

PROPOSED:
NO TURF REQUIREMENT--200 SF MAX.;
25% MIN. LIVE PLANT MATERIAL;
75% MAX. MULCH (3 TYPES MIN.)
- BOULDERS
- COBBLE
- RIVER ROCK
- PEA GRAVEL
- SHREDDED WOOD MULCH
- DECORATIVE WOOD MULCH
DECORATIVE CIRCULATING WATER FOUNTAIN WITH CONTAINED BASIN PERMITTED

LOW WATER USE TURF OR LOW SHRUBS, GROUNDCOVERS AND/OR ORNAMENTAL GRASS TREE LAWN




SCALE: 1"=20'




# PROSPERITY LANDSCAPE PLAN TYPICAL
70' x 100' LOT

## REAR YARD LANDSCAPE REQUIREMENTS:

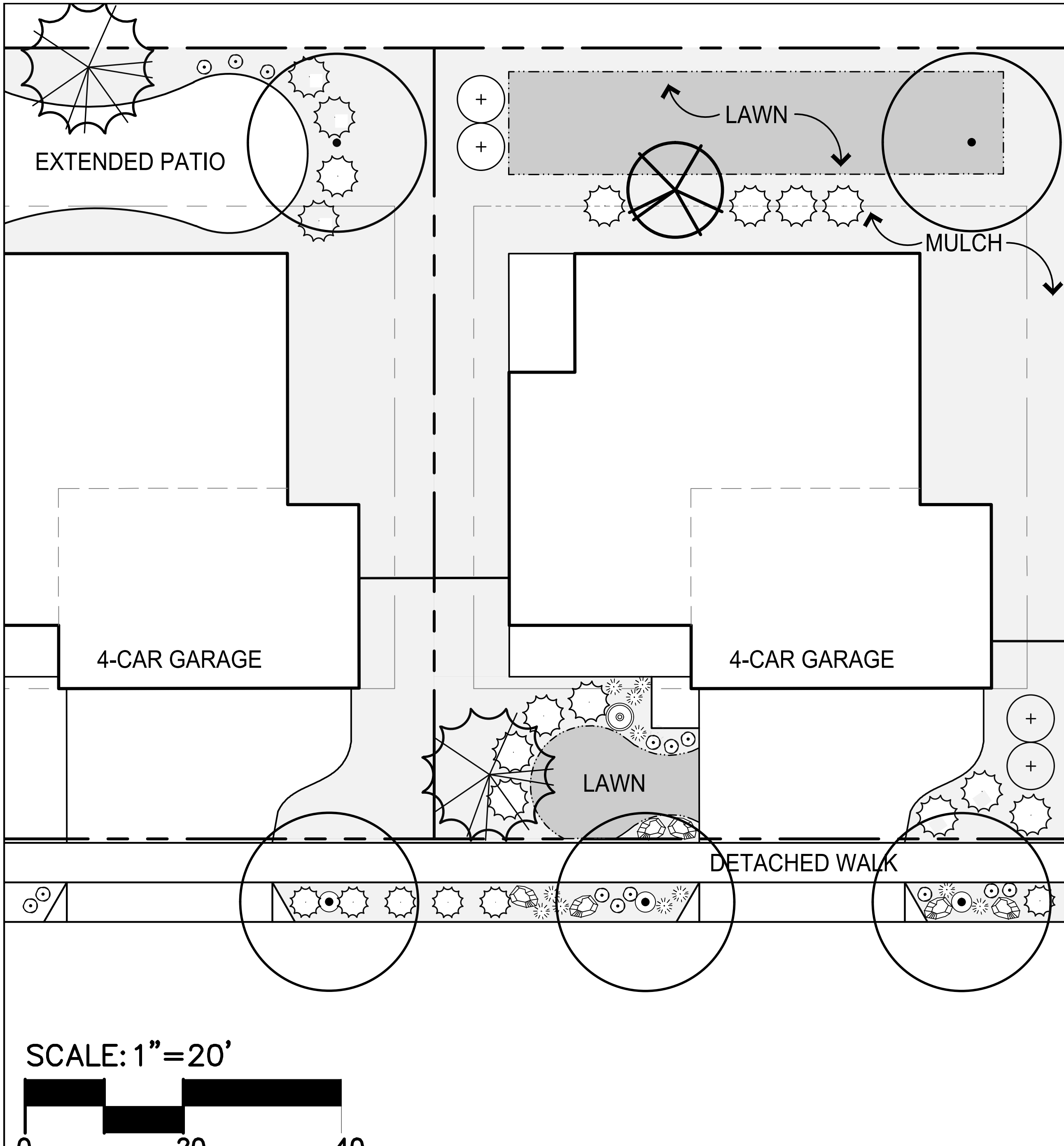
PROPOSED:
ALL LOW WATER USE PLANT MATERIAL INCLUDING BUFFALO GRASS OR TAHOMA TURF OR APPROVED EQUAL
- 1,000 SF MAX. TURF
- 1 SHADE TREE MIN.
- 1 EVERGREEN OR ORNAMENTAL TREE MIN.
- 6 SHRUBS MIN.

## FRONT YARD LANDSCAPE REQUIREMENTS:

PROPOSED:
NO TURF REQUIREMENT--200 SF MAX.;
25% MIN. LIVE PLANT MATERIAL;
75% MAX. MULCH (3 TYPES MIN.)
- BOULDERS
- COBBLE
- RIVER ROCK
- PEA GRAVEL
- SHREDDED WOOD MULCH
- DECORATIVE WOOD MULCH

DECORATIVE CIRCULATING WATER FOUNTAIN WITH CONTAINED BASIN PERMITTED

LOW WATER USE TURF OR LOW SHRUBS, GROUNDCOVERS AND/OR ORNAMENTAL GRASS TREE LAWN




REAR YARD LANDSCAPE REQUIREMENTS:

PROPOSED:
ALL LOW WATER USE PLANT MATERIAL INCLUDING BUFFALO GRASS OR TAHOMA TURF OR APPROVED EQUAL
- 1,000 SF MAX. TURF
- 1 SHADE TREE MIN.
- 1 EVERGREEN OR ORNAMENTAL TREE MIN.
- 6 SHRUBS MIN.

FRONT YARD LANDSCAPE REQUIREMENTS:

PROPOSED:
NO TURF REQUIREMENT--200 SF MAX.;
25% MIN. LIVE PLANT MATERIAL;
75% MAX. MULCH (3 TYPES MIN.)
- BOULDERS
- COBBLE
- RIVER ROCK
- PEA GRAVEL
- SHREDDED WOOD MULCH
- DECORATIVE WOOD MULCH
DECORATIVE CIRCULATING WATER FOUNTAIN WITH CONTAINED BASIN PERMITTED

LOW WATER USE TURF OR LOW SHRUBS, GROUNDCOVERS AND/OR ORNAMENTAL GRASS TREE LAWN

PROSPERITY LANDSCAPE PLAN TYPICAL
80' x 100' LOT

# PROSPERITY WATER REQUIREMENTS MEMORANDUM

**TO:** **RICHARD JABLONSKI**

**ALLIANCE DEVELOPMENT**

**FROM:** **CARL HURST, P.E.**

**HURST & ASSOCIATES**

**SUBJECT:** **PROSPERITY DEVELOPMENT WATER REQUIREMENTS**

**DATE:** **7/8/2022**

This memo addresses the water requirements for the 206 lot Prosperity Subdivision in the Town of Frederick.

Water usage unit values for "In-House Potable" is based on the Town's draft Water Efficiency Plan. The Town uses 30" per year water application rate for sod, ostensibly Kentucky Bluegrass (KBG). This rate is in excess of the CSU study which recommends 26" per year on average and in excess of the 15" per year (based on 50% of Town's KBG value) for Tahoma 31 Bermuda Grass (usage studies show that this grass uses 50% or less of the water required for KBG). Lot irrigation is based on the attached lot irrigation plans with a maximum of 1200 SF of grass with shrubs and trees as shown. Whether using CBT or raw water for irrigation, we recommend the use of Tahoma 31 for turf and lawn applications to significantly reduce the amount of required irrigation – reference Oklahoma State University studies which show this species to be hardy, drought tolerant, and requiring significantly less water than KBG. (see attached information)

The Prosperity HOA will control the irrigation and maintenance of all common areas, including the area between the sidewalk and curb; thus, irrigation can be strictly controlled to ensure that the benefits of using Tahoma 31 Bermuda grass are realized. Additionally, the Prosperity covenants and restrictions will require initial use of Tahoma for turf areas and review landscape plans to enforce guidelines for turf and native landscaped areas.

**Water requirements are based on the following unit uses:**

In-House Use – 42.4 gal per person per day (this aligns with the Town's current efficiency benchmark and is achievable through the use of water saving fixtures within the home)

Irrigation –

Tahoma 31 Bermuda Grass – 15.0" per year

Drip/Native for Trails per Town Guidelines – 14.4" per year

Low water use grass and xeriscape per attached landscape plans – 0.0458 AF per lot

**Demands are based on the following uses:**

Average Lot –

2.9 people per unit

Tahoma 31 Bermuda Grass

1200 SF maximum per lot

Low Water Usage Trees and Shrubs

18 Shrubs & 3 Trees per lot – see landscape plan

Parks and Trails –

5.87 Acres Tahoma 31 Bermuda Grass

8.04 Acres Drip/Native

Right of Way

3.20 Acres Tahoma 31 Bermuda Grass

**Total Demands**

206 Lots -

In-house – 0.138 Ac Ft per unit per year or 28.46 Ac Ft per year total

Irrigation – 9.43 Ac Ft per year total

Total Lot Demand – 37.89 Ac Ft per year

ROW, Parks and Trails –Total 20.98 Ac Ft per year

Tahoma 31 Bermuda Grass – 11.34 AF/Yr.    Drip/Native – 9.64 AF/Yr.

Total Water Demand – 58.87 AF/Yr.

**Potential Water Sources**

In-House Uses – 28.46 Ac Ft/Year

47.4 CBT units at 0.6 Ac Ft/CBT unit

Lot Irrigation – 9.43 Ac Ft/Year

15.7 CBT units at 0.6 Ac Ft/CBT unit

Parks and Trails – 16.98 Ac Ft/Year

28.3 units CBT or 16.98 Ac Ft of raw water

Right of Way – 4.0 Ac Ft/Year

6.7 units CBT or 4.0 Ac Ft or raw water

**Water Requirements Per Phase**

| PHASE | TOTAL LOTS | LOT IRRIGATION | | POTABLE | | PARKS AND TRAILS | | ROW | | TOTAL CBT |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Ac Ft | CBT | Ac Ft | CBT | Ac Ft | CBT | Ac Ft | CBT | |
| 1 | 36 | 1.65 | 2.75 | 4.97 | 8.28 | 2.16 | 3.60 | 0.76 | 1.27 | 15.90 |
| 2 | 27 | 1.24 | 2.06 | 3.72 | 6.20 | 1.31 | 2.18 | 0.55 | 0.92 | 11.36 |
| 3 | 31 | 1.42 | 2.37 | 4.28 | 7.13 | 1.32 | 2.20 | 0.56 | 0.93 | 12.63 |
| 4 | 30 | 1.37 | 2.29 | 4.14 | 6.90 | 7.85 | 13.08 | 0.50 | 0.83 | 23.10 |
| 5 | 23 | 1.05 | 1.76 | 3.19 | 5.32 | 1.31 | 2.18 | 0.34 | 0.57 | 9.83 |
| 6 | 26 | 1.19 | 1.98 | 3.59 | 5.98 | 1.31 | 2.18 | 0.40 | 0.67 | 10.82 |
| 7 | 33 | 1.51 | 2.52 | 4.57 | 7.62 | 1.72 | 2.87 | 0.89 | 1.48 | 14.48 |
| **TOTAL** | **206** | **9.43** | **15.72** | **28.46** | **47.43** | **16.98** | **28.30** | **4.00** | **6.67** | **98.13** |

Based on the Town's goals for efficient use of water as detailed in the draft Water Efficiency Plan, Prosperity will require a total of 58.87-acre feet of water, including common space. This amounts to a total of 98.1 shares of CBT or an average of slightly less than 0.5 share of CBT per lot overall. The above chart breaks out the water requirement per phase with the largest requirement being in Phase 4 with the development of the community park.

For any additional information or questions please contact me.

**HURST & ASSOCIATES, INC.**

Carl Hurst

Carl Hurst, P.E.

**DECLARATION OF COVENANTS, CONDITIONS,**
**AND RESTRICTIONS**
**FOR**
**PROSPERITY SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PROSPERITY SUBDIVISION ("Declaration"), is executed and delivered by JABLONSKI FAMILY LLLP, a Colorado limited liability limited partnership ("Declarant").

WHEREAS, Declarant owns certain residential real property located in Weld County, Colorado, more particularly described in **Exhibit A** attached and incorporated herein by reference ("Property"); and

WHEREAS, the Property will be developed for a planned residential community, to be known as "Prosperity Subdivision"; and

WHEREAS, the Property will be conveyed subject to the protective covenants, conditions and restrictions of this Declaration.

NOW THEREFORE, the Declarant hereby submits all of the Property described in **Exhibit A**, including all Lots, Outlots, Common Areas, appurtenant easements, rights and other improvements, to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101 *et seq*., as the same may be amended from time to time ("Act"). In the event said Act is repealed, the Act as it exists on the date this Declaration is recorded shall apply.

Declarant hereby declares that the name of the common interest community is "Prosperity Subdivision" ("Prosperity"), and the name of the Association is the Prosperity Homeowners Association, Inc., a Colorado nonprofit corporation ("Association").

Declarant further declares that all of the real Property described in **Exhibit A** shall be owned, held, used, occupied, maintained, sold and conveyed subject to the covenants, conditions and restrictions of this Declaration, all of which are declared and agreed to be for the protection and preservation of the value of the Property, and for the benefit of Owners of Lots within the Property, and which Declaration shall run with the land of the Property and shall be a burden and benefit to any person acquiring an interest in said Property, and their grantees, legal representatives, heirs, successors and assigns, as follows:

## ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless otherwise defined or the context otherwise reasonably requires, the following terms have the following meanings:

1.1 Act means the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101, *et seq*., as the Act may be amended from time to time.

1.2 Architectural Control Committee or ACC means a committee of individuals appointed by the Board of Directors of the Association, having the rights and authority provided by ARTICLE FOURTEEN, including authority to adopt and enforce Design Guidelines for the Property.

1.3 Assessments means the Common Expense Assessments and any other Assessment including Costs of Enforcement levied pursuant to this Declaration.

1.4 Assessment Lien means the statutory lien provided by the Act for any Assessment levied against a Lot, together with all Costs of Enforcement to the extent they are enforceable as Assessments, to the full extent provided by §38-33.3-316 and other relevant sections of the Act. If an Assessment is payable in installments, the full amount of such Assessment is a lien from the time the first installment is due. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien, and no further recording or additional claim is required to establish and perfect such Lien.

1.5 Association means PROSPERITY HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, its successors or assigns. This Declaration, the Articles of Incorporation ("Articles") and Bylaws ("Bylaws") of the Association, and any Rules adopted by the Board, shall regulate the Property and govern the administration and management of the Association.

1.6 Board of Directors or Board means the group of at least three (3) individual Directors of the Association, initially appointed by the Declarant and thereafter duly elected by Owners as provided herein. The Board is the governing body of the Association and shall act for and on behalf of the Association.

1.7 Bylaws means any written Bylaws adopted by the Board for managing and regulating meetings and other affairs of the Association, as such Bylaws may be amended from time to time.

1.8 Common Area(s) means "Common Element(s)" as defined by the Act, and includes all real property, improvements and appurtenances in which the Association owns or holds an interest (whether in fee, easement, lease, or other interest) or in which the Association has a duty to maintain or insure. The Common Areas to be owned by the Association consist of **Outlots A, B, D, E, F, G, H, I, J, K, L, M, N, P, Q and R**, as depicted in the Plat (defined below) a copy of which is attached as part of **Exhibit A**. Except as otherwise provided herein, the Association is responsible for taxes, assessments, insurance, maintenance, repair and replacement of Common Areas.

1.9 Common Expense Assessments are defined in ARTICLE SIX.

1.10 Common Expense Liability means the per-Lot liability of Owners for paying Common Expense Assessments allocated to each Lot using the formula: 1/206 or 0.485% per Lot.

1.11 Common Expenses means costs, fees, expenses and/or liabilities incurred by or on behalf of the Association, including insurance and prudent reserves.

1.12 Costs of Enforcement means expenses including reasonable attorneys' fees, collection costs, late charges, interest at the legal rate, and other collection costs incurred by the Association in connection with: (a) collecting Assessments; (b) enforcing an Assessment Lien; or (c) enforcing the Declaration, Rules, or other governing document of the Association.

1.13 Declarant means JABLONSKI FAMILY LLLP, a Colorado limited liability limited partnership or its assigns, including any successor to Declarant or transferee of Declarant Rights.

1.14 Declaration means this DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PROSPERITY SUBDIVISION, as the same may be amended from time to time.

1.15 Declarant Rights means development rights described in §§38-33.3-103(14), (29), and -210 of the Act, including any Special Declarant Rights reserved by Declarant under ARTICLE ELEVEN.

1.16 District means and refers to the Prosperity Metropolitan District, a special district organized pursuant to C.R.S. §§ 32-1-101, *et seq*. to serve the Property.

1.17 Eligible Mortgagee means an owner, holder, insurer or governmental guarantor of a First Security Interest who has delivered written notice to the Association identifying its name, address, and the legal description of any Lot in which it claims an interest, and requesting that the Association provide notice of any proposed action under this Declaration that may require the consent of any specified percentage of Eligible Mortgagees.

1.18 First Security Interest means a Security Interest having priority of record over all other recorded liens and interests except those made superior by statute (such as for general ad valorem property taxes).

1.19 Guest means any non-Owner who: (a) visits the Property; or (b) is a guest or invitee of an Owner; or (c) is a tenant or occupant of any Residence, or a member of such tenant's or occupant's household, or a guest, invitee or cohabitant of such person in Residence; and includes a contract purchaser of a Lot.

1.20 Lot means the single-family residential plots of land subject to this Declaration and designated as "Lot" on the Plat(s) of the Property recorded in the office of the Clerk and Recorder of Weld County, Colorado, together with all improvements and appurtenances located now or in the future on such Lots, including any Residence. At the time of this Declaration, two hundred six (206) Lots are platted and one (1) vote is allocated to each Lot.

1.21 Managing Agent or Property Manager means any one or more qualified individuals or entities who may be licensed as required by the Act, and employed or engaged by the Association as Property Manager or to perform any of the duties or functions of the Association.

1.22 Member means an Owner of a Lot who is entitled to membership in the Association by virtue of such Lot ownership.

1.23 Outlot means the plots and tracts of land designated "Outlot" on the Plat, together with any appurtenant improvements including trails, parks, open space, landscaping, irrigation systems, sidewalks, curbs, gutters, storm drainage, or similar Common Area improvements. The Association has a maintenance obligation for **Outlots A, B, D, E, F, G, H, I, J, K, L, M, N, P, Q and R,** as Common Areas. The Association also has a maintenance obligation for certain off-site storm drainage and non-potable irrigation improvements located in and across Outlot B of the neighboring Angel View Estates Subdivision.

1.24 Owner means the record title owner, including Declarant, of any Lot subject to this Declaration, whether one or more individuals or entities; excluding, however, those having an interest in a Lot merely as security for performance of an obligation.

1.25 Period of Declarant Control means the period of time defined in ARTICLE FOUR.

1.26 Plat means and refers to the Final Plat of Prosperity Subdivision approved by the Town of Frederick on **September 14, 2021** and recorded in the office of the Weld County Clerk and Recorder on **January 31, 2022** at **Reception No. 4798603** (the "Plat"), a copy of which is attached hereto as part of **Exhibit A**, as the same may be amended.

1.27 Property means all the real property described in **Exhibit A** to this Declaration.

1.28 Residence means any residential improvement constructed on a Lot, including single-family dwelling units and related appurtenances. At the time of this Declaration, the maximum number of dwelling units allowed to be constructed in Prosperity is two hundred six (206) Residences, one (1) per Lot.

1.29 Rules means any written Rules and Regulations lawfully adopted by the Board governing the use, occupancy, maintenance, or regulation of Lots, Common Areas, and/or the Property.

1.30 Security Interest has the meaning set forth in C.R.S. § 38-33.3-103(28).

1.31 Special Assessment is defined in ARTICLE SIX.

**ARTICLE TWO: COMPLIANCE**

2.1 Compliance with Declaration. Each Owner agrees that such Owner shall strictly comply with and shall cause such Owner's Guests to strictly comply with, all of the terms and provisions in this Declaration, the Articles and Bylaws of the Association, and the Rules and Regulations of the Association as adopted by the Board, as the foregoing may be adopted, established, and/or amended from time to time. Each Owner shall be responsible for compliance by all Guests of such Owner, and any failure to comply shall be grounds for action to compel compliance with this Declaration, or to recover damages or injunctive relief or both, along with Costs of Enforcement in any enforcement proceeding maintainable by the Board in the name of the Association, or, in a proper case, by an aggrieved Owner.

2.2 No Restrictions on Sale of a Lot. The right of an Owner to sell, transfer and otherwise convey such Owner's Lot shall not be subjected to any right of first refusal in favor of the Association, or any similar restriction on an Owner's right to transfer, except that all Lots are and shall remain subject to the provisions of this Declaration.

2.3 No Restrictions on Mortgaging a Lot. There are no restrictions on the right of an Owner to mortgage or otherwise encumber such Owner's Lot for financing purposes, and no requirement to use any particular lending institution or secure any particular type of loan.

**ARTICLE THREE: RIGHTS AND EASEMENTS**

3.1 Rights in Common Areas. Each Owner shall have the non-exclusive right and license, in common with all other Owners, to use and enjoy the Common Areas, subject to the provisions of this Declaration, subject to any Declarant Rights reserved by Declarant, and subject to the following rights of the Board:

(a) To regulate the use and maintenance of Common Areas as provided by §38-33.3-302 and this Declaration, and to promulgate and adopt Bylaws and Rules;

(b) To grant, convey or subject all or part of the Common Areas to a Security Interest, to borrow money to maintain, repair, or improve Common Areas, and to pledge said Common Areas as security for a loan of the Association for such purposes; provided that such grants may be subject to §38-33.3-312 of the Act requiring sixty-seven percent (67%) Owner approval;

(c) To grant or convey easements, licenses, permits, rights and similar interests in all or any part of the Common Areas to any public agency, government, special district, or utility for public or quasi-public purposes, subject to reasonable conditions as may be imposed by the Board to protect the Association; provided that conveyances in fee may be subject to §38-33.3-312 of the Act requiring sixty-seven percent (67%) Owner approval;

(d) To take such steps as are reasonably necessary to protect and preserve the Common Areas against damage, loss or foreclosure;

(e) To enter into, make, perform and enforce contracts, leases and agreements for the maintenance and preservation of Common Areas or for any lawful purpose that the Board may deem useful, beneficial, or appropriate to the Property or the Association;

(f) To close or limit the use of Common Areas temporarily (for up to 72 hours without notice) while maintaining, repairing or making replacements in the Common Areas, or permanently if also approved by the affirmative vote of sixty-seven percent (67%) of Owners, unless such Common Areas are required to be left open by the Town of Frederick;

(g) To make such use of the Common Areas as may be necessary or appropriate for the performance of duties and functions which the Association is obligated or permitted to perform under this Declaration, and to exercise rights and enforce remedies in the Declaration and Rules.

3.2 Delegation of Use. An Owner may delegate such Owner's right of enjoyment to the Common Areas to such Owner's Guest(s).

3.3 Easement for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot, then an easement for such encroachment and its maintenance exists, to the extent provided by §38-33.3-214 of the Act and for so long as is reasonably necessary.

3.4 Emergency Access. A non-exclusive access easement is hereby granted through, in, upon and across the Property for access, ingress and egress for the benefit of all police, sheriff, fire protection, ambulance, rescue, first responder, and similar emergency response agencies now or hereafter serving the Property, to enter upon all areas of the Property in the performance of their official duties.

3.5 Utility Easements. The Board may grant interests in the Common Areas for utilities, access, and other lawful purposes as are reasonably necessary for the proper maintenance and operation of the Property.

3.6 Owner's Easement for Access. Each Owner shall have a nonexclusive easement for access between such Owner's Lot and the Common Areas including access to abutting internal streets within the Property.

3.7 Easements Deemed Appurtenant. The easements, uses and rights herein described shall be perpetual and appurtenant to the Lot(s) and Common Areas, as appropriate, and all conveyance instruments affecting title shall be deemed to impliedly grant and reserve such non-exclusive easements, uses and rights, as though fully set forth therein.

**ARTICLE FOUR: THE ASSOCIATION**

4.1 Name. The name of the Association is PROSPERITY HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation. The Association shall register with the State of Colorado as provided by Colorado law.

4.2 Purposes and Powers. The Association shall own, manage, maintain, insure, repair, and replace all Common Areas and keep the same in orderly condition for the benefit of all Owners. The Association shall have all power and authority reasonably necessary or desirable to properly effectuate such purposes, and to manage the business and affairs of the Association, including all powers in §38-33.3-302 of the Act. Any purchaser of a Lot shall be deemed to have assented to, ratified, accepted, and approved such rights and powers of the Association.

4.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors consisting of at least three (3) individuals, initially appointed by Declarant. The Board may delegate certain of its authority to committees of the Board including an ACC, and may delegate certain authority to a qualified Property Manager for the Association, provided that no such delegation shall relieve the Board of final responsibility for oversight and management.

4.4 Articles and Bylaws. The purposes and powers of the Association and its rights and obligations in this Declaration may be supplemented by provisions of the Association's Articles and Bylaws. In the event the Articles conflict with the Bylaws, the Articles control, and in the event the Articles or Bylaws conflict with this Declaration, the Declaration controls.

4.5 Membership. Every record Owner of a Lot subject to this Declaration is a Member of the Association by virtue of Lot ownership. Membership in the Association is appurtenant to a Lot and may not be separated from Lot ownership, which is the sole qualification for membership. Where more than one person holds joint ownership in a Lot, each such joint owner is a Member.

4.6 Voting Rights. There is one class of voting membership in the Association which is appurtenant to Lot ownership. Owners are entitled to one (1) vote per Lot. If Lot ownership is held jointly by more than one Owner, then the vote for such Lot may be exercised by any one Owner, unless a written objection or protest by any other Owner of such Lot is delivered to the Association prior to the completion of all voting, in which case the vote for such Lot shall be exercised as its joint Owners may agree. Should joint Owners of a Lot be unable to agree prior to the completion of all voting, the joint Owners' right to vote in that particular case is deemed waived. The maximum number of votes cast in any particular matter shall not exceed the total number of Lots (206) existing within the Property.

4.7 Declarant Control of the Association. There shall be a period of Declarant control, during which time the Declarant may appoint and remove individual members of the Board and the ACC in the Declarant's sole and absolute discretion, and during which time the Declarant may exercise Development Rights, Special Declarant Rights, and other rights provided by the Act or this Declaration. The period of Declarant control begins with the recording of this Declaration and terminates no later than the earlier of:

(a) sixty (60) days after the conveyance of seventy-five percent (75%) of all Lots to Owners other than the Declarant (currently, 155 Lots); or

(b) two (2) years after the last conveyance of a Lot held by the Declarant in the ordinary course of business; or

(c) two (2) years after any right to add new Lots was last exercised.

4.8 Election of Board. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of all Lots (52 Lots) to Owners other than Declarant, at least one (1) member of the Board shall be elected by the Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of all Lots (103 Lots) to Owners other than Declarant, at least one-third of the Board membership shall be elected by the Owners other than Declarant. Upon termination of the period of Declarant control, the Owners shall elect a Board of at least three (3) members, at least a majority of whom shall be Owners other than Declarant, and the Owners so elected to the Board shall take office.

4.9 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than Declarant elect a Board of at least three (3) members, the Declarant shall deliver to the Association the items listed in §38-33.3-303(9) of the Act, including:

(a) Originals or true and correct copies of: (i) the recorded Declaration as amended (ii) the Articles and Bylaws, (iii) any adopted and published Rules and Regulations, and (iv) any written meeting minutes, resolutions, and similar books and records of the Association;

(b) An accounting for Association funds including financial statements from the date the Association first received funds, and ending on the date that the period of Declarant control ends, together with a letter issued by a licensed and certified public accountant who prepared and reviewed such financial statements, affirming accuracy and conformance with generally accepted accounting principles;

(c) Association funds or control thereof, and copies of any insurance policies then in force in which the Association or its directors or officers are named as insureds;

(d) Any tangible personal property represented by the Declarant to be the property of the Association and used exclusively in the operation of the Common Areas;

(e) Any copies of plans and specifications used to construct Common Area improvements;

(f) Any governmental permits or certificates of occupancy issued to the Association which are currently in force or were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

(g) Any written warranties of an Association vendor, contractor or supplier that are still effective;

(h) Any list of Owners and Eligible Mortgagees (including addresses and telephone numbers, if known) maintained by the Association;

(i) Any agreements in which the Association is a contracting party or has a contractual right or obligation to pay or perform.

4.10 Budget. Within ninety (90) calendar days after adoption of any proposed budget for Common Expenses ("Budget"), the Board shall mail a summary of the Budget to each Owner, by ordinary first-class mail or electronic mail or other delivery method, and set a date for the Board and Owners to meet and consider the Budget. The Budget does not require approval of the Owners and will be deemed approved unless at that meeting the Owners of at least sixty-seven percent (67%) of all votes in the Association veto and reject the Budget. In the event that the Budget is so vetoed and rejected, then the last Budget not vetoed shall continue until such time as a new Budget is adopted.

4.11 Association Agreements. Any agreement for professional management of the Property or any service contract purporting to bind the Association may not exceed one (1) year, and must provide for termination upon no more than ninety (90) days' notice without payment of any termination fee or penalty. The Association shall not be bound to any service contract entered into during the period of Declarant control unless the Association is provided rights consistent with this Section.

4.12 Indemnification. Each Director, officer and committee member who serves the Association shall be indemnified by the Association against all expenses and liabilities including reasonable attorney fees and costs of defense incurred by or imposed upon such person, in any proceeding to which he or she may be involved by reason of having been a Director, officer or committee member, to the fullest extent permitted by Colorado law.

4.13 Certain Rights and Duties of the Association.

(a) Attorney-in-Fact. The Board is hereby irrevocably appointed as attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Common Areas, and to permit the Association to fulfill its duties and exercise all of its rights, and to deal with the Property upon any damage, destruction, condemnation or obsolescence. The acceptance by any person of any interest in a Lot shall constitute an appointment of the Board as attorney-in-fact for such purposes, and the Board shall be granted all powers reasonably necessary to perform the duties of the Association.

(b) Contracts, Easements, Agreements. The Board shall have the right and power to enter into, grant, perform, enforce, modify, cancel or vacate contracts, easements, licenses, leases, agreements or rights-of-way concerning the Common Areas. Any such contract or agreement shall be upon such terms and conditions as may be determined and agreed to from time to time by the Board, without the necessity of consent or vote by any Owner or Mortgagee, and the Association may undertake any lawful activity, function or service for the benefit of the Property and its Members.

(c) Implied Rights. The Board shall have and may exercise any right or privilege granted expressly or reasonably implied by this Declaration or granted or implied by Colorado law or the Act, that may be necessary to fulfill its rights and obligations.

(d) Disclosures and Governance. Within ninety (90) days after the end of the period of Declarant control, the Association and Board shall comply with all duties and obligations under the Act, including §§ 38-33.3-209.4 through -209.7.

4.14 Rights of Declarant. So long as there are Lots within the Property owned by Declarant, the Declarant shall have and enjoy the same rights and benefits as any Owner associated with Lot ownership.

**ARTICLE FIVE: COMMON AREAS, LANDSCAPING, WATER EFFICIENCY MEASURES**

5.1 Conveyance of Common Areas. Declarant shall convey to the Association title to Outlots A, B, D, E, F, G, H, I, J, K, L, M, N, P, Q, and R, and shall transfer appropriate rights or easements in any other areas required to be owned or maintained by the Association as Common Areas, by appropriate written instruments recorded with the Clerk and Recorder of Weld County, Colorado.

5.2 Maintenance. The Association shall have the duty to maintain, repair, insure and keep the Common Areas in good order and repair, and all costs of such ownership, maintenance, repair, replacement and insurance shall be funded by the Assessments provided in ARTICLE SIX. Maintenance includes upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, irrigation systems, and other improvements located in the Common Areas. The Declarant shall procure a water supply and the Association shall maintain an irrigation system in the Common Areas, including Common Areas along interior streets. In the event the Association fails to maintain Common Areas, Declarant shall have the right but not the obligation to maintain Common Areas at the Association's expense.

5.3 Landscape and Xeriscape Installation. Each Owner of a Lot, by acceptance of a deed to such Lot, hereby promises, covenants and agrees that such Owner shall be personally obligated to install and maintain drought-tolerant landscape and/or xeriscape improvements to such Owner's Lot (including shade trees, drought-tolerant grasses and shrubs, xeriscape and hardscape areas, drip irrigation systems and smart controllers), and to abide by the outdoor irrigation standards and restrictions established for the Property. Each Owner specifically acknowledges and accepts the Association's authority pursuant to C.R.S. §38-33.3-106.5(i)(I) and the Act, to regulate and enforce outdoor drought-tolerant landscape / xeriscape standards and irrigation requirements, including water conservation measures encouraged by the Town of Frederick and/or adopted by the ACC.

5.4 Lot Landscaping Standards; Irrigation Restrictions. All Lots are subject to the drought-tolerant landscaping standards and Lot-area irrigation restrictions identified in the attached **Exhibit B** and as otherwise adopted and published by the ACC. Owners shall have the ongoing duty to monitor, manage and reduce outdoor irrigation demand by installing rain barrels and low-water-use landscapes and xeriscapes using drought-resistant vegetation, prohibiting turf other than native "buffalo" grass and Tahoma 31 ® Bermuda grass, reducing irrigated turf-grass areas overall (not to exceed 1,200 s.f. per Lot), and by installing water efficient drip irrigation systems and smart irrigation controllers. By accepting a deed to a Lot, all Owners acknowledge and agree that "Kentucky Blue" and similar water-intensive turf-grass varieties are prohibited on Lots and Common Areas. All Lot landscape installations by or on behalf of Owners are subject to ACC review and approval to confirm compliance with this Article Five including **Exhibit B**.

5.5 Common Area Irrigation Restrictions. The Association shall carefully monitor and control all outdoor irrigation in the subdivision especially in Common Areas. The Association has full authority to implement demand-side water management best practices and the responsibility to promote water conservation and efficient water use in the subdivision, consistent with principals set forth in the *Water Efficiency Plan* adopted by the Town of Frederick on March 22, 2022. The Association is further granted the authority to adopt and enforce demand-side water management best practices, targeted water budgets, and irrigation restrictions for all Lots and Common Areas in the subdivision. The Association shall have authority to penalize water waste in the subdivision and to enforce violations of this Article Five to the fullest extent permitted by Colorado law.

**ARTICLE SIX: ASSESSMENTS**

6.1 Obligation. Each Owner, upon accepting the deed for such Owner's Lot, promises, covenants, and agrees that each Owner shall be personally obligated to pay to the Association: (a) the Common Expense Assessments, (b) any necessary Special Assessment, (c) any Fines properly imposed by the Association, and (d) Costs of Enforcement in appropriate cases. The obligation to pay Assessments to the Association, in full without set off or deduction, is an independent personal covenant of each and every Owner. All Owners are jointly and personally liable to the Association for the full and timely payment of all Assessments attributable to such Owner's Lot.

6.2 Purpose of Assessments. The Common Expense Assessment shall be used by the Association for the purpose of owning, maintaining, improving, insuring, repairing, and replacing Common Areas and improvements, and promoting the health, safety and welfare of the Property and Members of the Association. Such purposes shall include the improvement, maintenance, repair, reconstruction and insuring of Common Areas; maintenance of drought-tolerant landscaping and smart irrigation systems; delivery of irrigation water to landscaped Common Areas including Outlots; maintenance of certain off-site areas (including storm drainage and related easements benefitting the Property) including any off-site Outlot; and all costs attributable to owning, maintaining and insuring such Common Areas and managing and operating the affairs of the Association, including the establishment and maintenance of prudent reserves and working capital.

6.3 Commencement of the Common Expense Assessment. The Common Expense Assessment shall commence for all Lots on the effective date set forth in the first Budget of the Association, as determined by the Board. Until the Association commences collecting Common Expense Assessments, the Declarant shall pay reasonable and necessary expenses of general upkeep, not including reserves or working capital.

6.4 Special Assessments. In addition to other Assessments authorized herein, the Board, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any necessary but unexpected or unforeseen expense, to include but not be limited to the cost of any construction, improvement, repair or replacement of a capital improvement in any of the Common Areas or Outlots, including fixtures, equipment and personal property relating thereto, or for the funding of any operating deficit incurred by the Association, or to cover uninsured losses of the Association; provided that any such Special Assessment other than uninsured losses shall require approval of Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated, voting in person or by proxy at a meeting duly called for that purpose. A Special Assessment shall be levied against each Lot according to the Common Expense Liability allocated to such Lot.

6.5 Fines. The Board shall have the right to levy fines against a defaulting Owner for each uncured violation of the Declaration and/or Rules of the Association. No such fine shall be levied until such Owner has received notice and an opportunity to cure, and/or for a hearing if required by the Act. Fines may be levied and shall be uniformly applied in reasonable amounts, determined from time to time by the Board in its discretion, and may be collected with Costs of Enforcement.

6.6 Levy of Assessments. Common Expense Assessments shall be levied on all Lots based upon the Budget reflecting the Association's reasonable and necessary cash requirements. The Common Expense Liability shall be prorated equally among all Lots according to the allocated interests. Special Assessments, if any, shall be levied according to Section 6.4. Fines may be levied at any time after a defaulting Owner fails to cure a violation. No Owner may avoid or otherwise disclaim liability for paying Assessments by non-use of Common Areas or abandonment of a Lot.

6.7 Due Date. Common Expense Assessments shall be levied annually and shall be due and payable in equal monthly or quarterly installments, as determined by the Board; provided that the first Assessment levied shall be adjusted to reflect the time remaining in the Association's first fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share. Special Assessments shall be due and payable as established by the Board but may be payable in installments if allowed by the Board. The Association shall endeavor to provide regular and reasonable notice of all Assessments to each Owner specifying the type, purpose, amount, and due date.

6.8 Remedies for Nonpayment of Assessment. If any Assessment is not fully paid within fifteen (15) days after the same was due and payable, then, subject to any limitations or additional procedures required by the Act:

(a) Interest shall accrue at the default rate of six percent (6%) on all amounts in default, accruing from the due date until the date of payment;

(b) The Board may accelerate and declare immediately due and payable all unpaid installments in default, including any Assessment balance due and payable for the year in which default occurred;

(c) In appropriate cases, the Board may commence a civil action against any Owner obligated to pay the Assessment and obtain judgment for amounts due; and may proceed to collect such judgment including foreclosing the Lien against the Lot, pursuant to the power of sale granted to the Association by this Declaration in the manner provided by Colorado foreclosure laws.

(d) The Board may pursue any lawful remedy including any or all of the foregoing without prejudice to any other right or remedy or in any way waiving the Association's Assessment Lien.

6.9 Assessment Lien. The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Association, plus Costs of Enforcement which may be enforceable as Assessments. If an Assessment is payable in installments, then the full amount of the Assessment is a Lien from the time that the first installment becomes due. The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except: (i) ad valorem property taxes and special assessments imposed by a government, political subdivision or special taxing district, or any other superior lien under Colorado law; and (ii) the lien of a First Security Interest, except to the extent the Act grants priority for Association Assessments. Any Mortgagee who acquires title to a Lot by foreclosure or deed in lieu of foreclosure takes the Lot subject to the full extent of any unpaid Association Assessments provided by the Act.

Recording this Declaration constitutes record notice and perfection of the Assessment Lien. No further recording of any additional claim of lien is required, but the Board may record a notice setting forth the amount of the unpaid indebtedness and a description of the Lot. The sale or transfer of a Lot shall not affect the Lien for Assessments except pursuant to foreclosure or any proceeding in lieu thereof, but only to the extent provided by Colorado law. No sale, transfer, conveyance, foreclosure, deed in lieu of foreclosure, cancellation or forfeiture shall relieve any Owner from continuing personal liability for any unpaid Assessment.

In any action by the Association to collect Assessments and Costs of Enforcement or to foreclose a Lien for unpaid Assessments, the court may appoint a receiver to collect all sums due from the Owner and may order the receiver to pay the Association. The Assessment Lien on the Lot is also a lien upon all of the rents and profits of such Lot. Without prejudice to any other right or remedy, the Association may exercise its right to collect rents and profits by delivering notice to the tenant or occupant, and thereafter shall be entitled to collect all such rents and profits to the extent of any Assessment delinquency.

The Association's Lien shall be superior to any homestead or other exemption now or hereafter claimed or provided by the laws of the State of Colorado or the United States. The acceptance of a deed to any Lot subject to this Declaration shall constitute express waiver of the homestead and/or any other exemption claimed as a defense against the Assessment Lien.

6.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for its expenses and provision for reserves shall be retained by the Association as working capital or other prudent reserves, and need not be refunded to Owners or credited to reduce future Assessments.

6.11 Working Capital. Upon any transfer of a Lot, each new Owner as Purchaser shall pay a one-time non-refundable working capital contribution to the Association, in an amount to be established by the Board from time to time, equal to six (6) months' worth of regular monthly Assessments but not to exceed three percent (3%) of the sales price for such Lot. Such sum shall be held and used by the Association for working capital reserves and other Association expenses as the Board deems necessary or appropriate. Such contributions are separate from and in addition to the Common Expense Assessment.

6.12 Certificate of Assessment Status. The Association shall furnish to an Owner upon written request a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) business days after such request and is binding upon the Association, the Board, and every Owner. The Association may charge a reasonable fee for providing such certificates.

6.13 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction shall be permitted for any reason including, without limitation, any objection or claim that the Association or Board is not properly exercising its powers and duties under this Declaration.

**ARTICLE SEVEN: RESTRICTIVE COVENANTS**

7.1 Use and Occupancy of Lots; No Subdivision. Each Owner is entitled to the exclusive ownership, possession, use and control of such Owner's Lot, subject to the covenants, conditions, restrictions and limitations of this Declaration and any Rules for the Property adopted by the Board. No Lot may be subdivided, and no Lot within the Property shall be used for any purpose other than lawful single-family residential purposes. Home occupations may be allowed, provided that: such occupations are permitted by applicable Town of Frederick building, zoning and land use codes; no additional parking is required; and no outside employees, customers, commercial signage or exterior advertising are allowed.

7.2 Use of Common Areas. Owners and Guests may use Common Areas for the intended purposes of such Common Areas, without causing any unreasonable interference with the rights of other Owners or the Association, subject to any uniform, nondiscriminatory Rules governing the Common Areas as may be adopted and published by the Board. Each Owner, by accepting title to a Lot, and such Owner's Guests, agree to observe such adopted Rules. There shall be no obstruction of any Common Area, nor any storage, construction or alteration by Owners affecting any part of any Common Area.

7.3 Grading, Drainage, Utilities. Each Owner acknowledges that each Lot, as well as the Property, are subject to established engineered grading, drainage and utility plans approved by the Town of Frederick, and that no existing Lot grading, drainage or utility easement may be altered, obstructed, excavated, modified or re-graded in any respect, whether by any landscaping, improvement or other alteration. No Owner shall cause, suffer or permit any such modification, alteration, or physical obstruction (including fencing, landscaping, sheds, garden beds, or other outdoor improvement) that may affect any final Lot grading, drainage or utility easement serving a Lot, or such as may affect drainage or utility easements serving the Lots and Property.

7.4 Landscaping, Xeriscapes, Water Conservation. Each Owner specifically acknowledges that the Declarant and Town of Frederick encourage the conservation of valuable water resources, and that the Property, Common Areas, Lots and Residences are planned, designed and intended to encourage water conservation and to foster sustainable use of water resources. The Association and each Owner shall exercise diligence and care in the planning, construction, planting, maintenance and irrigation of landscaping for all Lots and Common Areas, in order to conserve water resources. The Board and/or ACC may adopt and enforce Rules including requirements applicable to the location and appearance of outdoor rain barrels and may require the installation and maintenance of xeriscapes and drought-tolerant species on Lots and Common Areas.

7.5 Pets and Other Animals. No farm animals (e.g., livestock, cattle, horses, goats, chickens or pigs) shall be raised, bred, kept or boarded in any part of the Property. Domestic dogs, cats and similar pets are allowed in Lots occupied by Owners, so long as they are not raised, bred or kept for any commercial purpose or in such number or manner as to create a nuisance or disturbance to any resident of the Property. The Board shall have authority to determine in its reasonable discretion whether dogs, cats or other animals are being kept for commercial purposes or in such numbers or manner as to be unreasonable or create a nuisance, or that such keeping of animals violates this Declaration. Pets shall not be allowed to run at large but shall be leashed and under the voice and sight control of an Owner or handler at all times, and pets shall not be allowed to litter or otherwise damage the Common Areas in any respect.

7.6 No Nuisance or Unsightly Conditions. No illegal, noxious, destructive, unreasonably loud or offensive activity shall be carried on within the Property, nor shall any activity be caused, suffered or permitted which may be or become unreasonably disruptive or constitute an annoyance, disturbance, interference or nuisance to the neighborhood, or such as may detract from the character of the Property as a family-oriented residential community. Habitually barking, yelping or aggressive dogs are deemed a nuisance. Decks, patios, yards and driveways shall be kept free of clutter and obstacles and shall not be used for any outdoor storage. No activity shall be conducted on the Property that is unlawful, unsafe, hazardous or damaging to person or property. Owners shall keep and maintain the exterior of Lots and Residences in reasonably clean and orderly condition. No Lot shall be used as a dumping ground for rubbish or storage area for junk, trash, weeds or other waste. Trash shall be kept in suitable containers appropriately screened from view.

7.7 Vehicle Parking, Storage, Maintenance. Each Residence is equipped with an enclosed garage for the proper storage of passenger vehicles and related equipment and accessories. No disabled or inoperable vehicle shall be stored or parked outdoors, and no vehicle or equipment maintenance, repair, or servicing shall be conducted except within an enclosed garage. Motor homes, boats, trailers, campers, oversized vehicles or equipment shall not be stored outdoors anywhere within the Property. No oversized vehicle may be parked on a Lot or residential street for more than seventy-two (72) hours on any one occasion, and then only for the temporary purpose of active loading and unloading. The Association shall have the right to remove any vehicle or equipment stored in violation of this section upon written notice, the expense of which removal may be levied against the Owner as an Assessment.

7.8 Prohibition of Certain Activity. Nothing shall be done or kept within any Lot, Residence or Common Area that may result in cancellation of insurance on the Common Areas or increase the rate of such insurance, or that would violate any ordinance of the Town of Frederick, any Colorado statute, or any other law, code, or regulation applicable to the Property, including reasonable Rules adopted by the Board. No firearm shall be discharged within the Property, and no open burning fire shall be ignited within the Property (including the burning of trash, brush or rubbish).

7.9 Antennae; Swamp Coolers. Antennae shall be installed inside a Residence. Small (18") satellite receivers may be installed on the exterior of a Residence. Swamp coolers shall be located below the roof ridge-line, subject to prior review and approval by the ACC.

7.10 Sign Restrictions. No Owner may erect or maintain any business, commercial, or advertising sign on the Property, other than one "for sale" or "for rent" sign for such Owner's Lot no larger than eighteen by twenty-four inches. Owners may post political signs on such Owner's Lot, to the extent permitted by §38-33.3-106.5, no earlier than forty-five (45) days before, and no later than seven (7) days after, an election day; the size of any political sign is limited to the lesser of: (a) the maximum size permitted by the Town of Frederick, or (b) thirty-six inches by forty-eight inches. Notwithstanding the foregoing, during the period of Declarant control the Declarant may post signage on Lots and Common Areas advertising the Property and/or directing construction traffic.

7.11 Owner Caused Damage. If, due to the act, omission or neglect of any Owner or such Owner's Guest, any loss, damage or injury shall be caused to any person or property within the Common Area, such Owner shall be liable and responsible for the same.

7.12 Lease of a Residence. An Owner shall have the right to lease his or her Lot and Residence to a tenant, upon such terms as the Owner deems acceptable, subject to the following:

(a) All leases must be in writing and must provide for a single-family residential term of at least six (6) months. Short term rentals (including Air BnB, Home Away, VRBO, or similar) for any period of time less than six (6) months are prohibited. The Owner shall deliver to the Association a fully-executed copy of any lease or rental agreement, prior to any occupancy of a Residence by any tenant or occupant;

(b) Any lease or rental agreement involving a Lot or Residence shall expressly incorporate the terms and provisions of this Declaration by reference, and any such lease is hereby made expressly subject to all terms and provisions of this Declaration and the Articles, Bylaws, and Rules of the Association; further, any tenant's right of occupancy is subject to all local, state and federal laws, ordinances, codes and regulations applicable to such Lot and Residence;

(c) Any failure by a tenant or occupant to faithfully comply with the terms and provisions of this Declaration (or the Articles, Bylaws, and Rules of the Association) shall constitute material breach of the lease, which breach shall be fully enforceable by the Board against such tenant or occupant; and

(d) In the event of any such breach or default, the Board may exercise all rights and remedies under the lease and Colorado law against the tenant or occupant, including eviction remedies, and may also exercise all such rights and remedies under this Declaration against the Owner, separately or concurrently.

7.13 No Temporary Structures; Accessory Structures. Except for a Residence, no building, improvement or structure of a non-residential, accessory or temporary nature (including any tent, camper, barn, shed or outbuilding) may be used or occupied on the Property as a residence or dwelling. No detached accessory building shall be constructed without prior ACC review and approval and a building permit if required by the Town of Frederick. No accessory structure shall exceed eight (8) feet in height, or have a footprint greater than ten (10) feet by twelve (12) feet, or be placed anywhere other than in the rear yard, and its design, appearance, building and roof materials, and color scheme shall match the principal Residence. No such structure or other improvement shall be located within the side or rear setbacks of any Lot.

7.14 Residence Exteriors. The ACC may consider the following guidelines in reviewing and approving residential plans and designs including any improvements or alterations associated with any remodel, re-construction, addition or modification to a Lot or Residence:

(a) Each Residence shall be designed and constructed in harmony with its existing surroundings and for compatibility with neighboring Residences. Architecture and design elements, color palettes, building materials and roofing materials shall blend with and provide continuity to the existing character of the neighborhood and neighboring Residences;

(b) Every design shall incorporate the use of ACC-approved building materials (including brick, stone, siding, stucco or other approved materials), so as to establish and maintain a quality, custom-built look and harmonious feel for the Property;

(c) Any fence, shed, outbuilding, accessory structure, or other exterior improvement shall follow such guidelines and must be pre-approved by the ACC prior to any construction;

(d) No above-ground pools shall be allowed on the Property; the location of any hot tubs shall be pre-approved by the ACC and shall be shielded from street view;

(e) Holiday decorations shall be taken down by the beginning of February;

(f) All Lot landscaping and irrigation designs and installations shall comply with Article Five and **Exhibit B** in addition to any additional specific guidelines adopted by the Board and/or the ACC.

(g) The ACC shall have final authority to review and approve architectural style, design quality, colors, building materials, placement or screening of accessory structures, landscaping plans, and exterior lighting within the Property, and may adopt and publish written Design Guidelines for the Property.

7.15 Utility Lines. All water, sewer, natural gas, electric, telecommunication, cable and other utility service lines shall be buried underground from their primary connecting source at the Lot line at the Owner's sole expense.

7.16 Drainage. Except for the approved and established grading, drainage and erosion control, no structure or improvement shall be placed or located inside platted Lot setbacks or in any manner that may obstruct, divert or otherwise alter established drainage courses and patterns. No landscaping or changes to existing terrain shall be made which may obstruct, divert or otherwise alter such drainage.

7.17 Fences. Except for fences constructed by or on behalf of Declarant for the Property, any fence appurtenant to a Lot is an "Improvement" subject to ACC review and approval prior to any construction. No new fence shall be constructed unless specific written permission is granted by the ACC and permitted by the Town of Frederick. In determining whether to grant such permission, the ACC may consider the natural topography and aesthetic desires of the neighborhood, and the ACC has discretion to regulate and restrict fence height and proposed style on corner Lots and all other perimeter Lot lines and interior (side and rear) Lot lines.

7.18 No Surface Use for Drilling or Mining. No Lot or Common Area shall be used for surface extraction or as the surface well-head location for any drilling, mining, quarrying, exploring for, removing, or developing any oil, gas, hydrocarbon, mineral, gravel, or related resource. Any related equipment including pipelines or storage tanks of any kind, above or below ground, are prohibited.

7.19 ACC Rules and Procedures. In addition to the foregoing, each Owner shall comply with any Rules or Design Guidelines adopted by the ACC and/or Board pursuant to ARTICLE FOURTEEN.

## ARTICLE EIGHT: EXTERIOR MAINTENANCE

8.1 Exterior Maintenance. The maintenance, repair and upkeep of each Lot, including, but not limited to the Residence and all exterior improvements and appurtenances, shall be the responsibility of the Owner of such Lot. It shall be each Owner's obligation to commence landscaping his or her Lot within sixty (60) days after issuance of a Certificate of Occupancy for the Residence. Each Owner shall maintain the lawn and garden area within his or her Lot, and the Association may establish reasonable Rules regarding all exterior maintenance.

8.2 Special Easement. Declarant hereby reserves for itself and the Association, a nonexclusive easement to enter upon and use the Common Areas and each Lot as may be reasonably necessary or appropriate to perform the duties and functions permitted or required under this Declaration.

8.3 Maintenance Contract. The Board may employ or contract for the services of a maintenance contractor to perform certain duties of the Association for maintenance including landscaping, snow removal, or other such maintenance services benefitting the Property. The Board shall require any such contractor to maintain commercial general liability and casualty insurance naming the Association as a party entitled to coverage, and to indemnify, defend and protect the Association from and against any claims arising from such contractor's performance.

8.4 Owner's Failure to Maintain or Repair. In the event that a Lot, a Residence, or its improvements or appurtenances are not diligently maintained and repaired by an Owner, or in the event that the same are damaged or destroyed by casualty and the Owner does not diligently commence reasonable repair and restoration, then the Association after notice to the Owner may exercise the right to enter upon the Lot to perform such work as may reasonably be required to restore the Lot and improvements, and may assess the reasonable costs thereof against the Owner and Lot as an Assessment.

**ARTICLE NINE: INSURANCE**

9.1 General Requirements. Each Owner shall obtain and maintain sufficient property casualty and liability insurance for his or her Lot and Residence, and all other improvements and appurtenances of such Owner. THE ASSOCIATION WILL NOT PROVIDE INDIVIDUAL LOT COVERAGE IN ASSOCIATION POLICIES. The Association shall obtain and maintain insurance coverage specified in this Article 9 and/or as required by the Act, and each policy may provide that:

a) Owners are insured to the extent of such Owners' interest in the Common Areas, and no act or omission by an Owner, as such, will void any policy or be a condition to any recovery under a policy;

b) The insurer to the fullest extent waives any right of subrogation against Declarant, the Association, Board, Owners, and the members of Owners' households;

c) Such policy may not be canceled, substantially modified, or non-renewed (including for nonpayment of premium) without at least thirty (30) days' prior written notice to the Board and any Owner to whom a certificate of insurance has been issued;

d) Such policy should acknowledge that no assessment may be made against any Eligible Mortgagee or against others holding a lien superior to that of an Eligible Mortgagee, except as may be provided in the Act;

e) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner and Board member of the Association;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with a Best's rating of "A" or better, and all policies shall contain standard non-contributory mortgagee clause or equivalent endorsement appropriately naming any Eligible Mortgagee as beneficiary.

Such policies shall also provide that any "no other insurance" clause expressly excludes individual Owner policies from its operation, so that the property insurance policy purchased by the Board for the Association shall be deemed primary coverage, and any individual Owner policies shall be deemed excess coverage. In no event shall insurance coverage obtained and maintained by the Board for the Association provide for or be brought into contribution with any insurance purchased by an individual Owner or Mortgagee, unless otherwise required by law.

Insurance shall name the Association as policy owner and beneficiary, for the use and benefit of the Owners, and any loss covered by Association policies shall be adjusted exclusively by the Board and provide that all claims are to be settled on a replacement cost basis. The Board shall periodically review insurance policies to insure that coverages are sufficient, and at reasonable intervals shall obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent (100%) of the current replacement cost.

Deductibles shall be as the Board determines to be consistent with prudent business practice and the standard requirements of Eligible Mortgagees, not to exceed, however, Five Thousand Dollars ($5,000.00) or one percent of the face amount of the policy, whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to pay deductibles shall be included in Association reserves and may be so designated. The Board shall have authority to levy Assessments under Section 6.4 against any Owner(s) causing damage and/or loss, to reimburse deductibles paid or uninsured losses incurred by the Association.

9.2 Property and Liability Insurance. The Association shall obtain and maintain property insurance on the Common Areas for broad form covered causes of loss, in amounts not less than the full insurable replacement cost of the insured property, and comprehensive general liability insurance against claims and liabilities arising in connection with the existence, use, maintenance, management and regulation of the Common Areas, in an amount not less than One Million Dollars ($1,000,000.00) or other amount determined by the Board, and including property damage, bodily injury and death. Reasonable amounts of "umbrella" liability insurance in excess of these primary limits may be obtained.

9.3 Fidelity Insurance. The Association shall obtain and maintain fidelity insurance coverage for any Owner, Association employee, or Property Manager who handles or is responsible for Association funds. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon exclusion of persons who were without compensation from any definition of "employee" or similar expression. The fidelity insurance policy should cover the maximum funds (including reserves and working capital) in the custody of the Association or its Property Manager at any one time, but shall be not less than two (2) months' worth of annual total Assessments plus all reserves. The policy must include a provision requiring thirty (30) days' written notice to the Association before the policy can be canceled or substantially modified for any reason. Any Property Manager handling Association funds must be covered by its own fidelity insurance policy which must provide the same amount of coverage.

9.4 Additional Insurance.

a) If the area where the Property is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, then flood insurance for the Property shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the Property's current replacement cost or the maximum amount available. If the Property at the time of recording this Declaration is not identified as a Special Flood Hazard Area but later becomes reclassified as such, the Board shall endeavor to obtain flood insurance for the Common Areas in accordance with the above. Flood insurance may be discontinued if the Property is removed from any designated flood plain.

b) Adequate Directors and Officers liability insurance, including errors and omissions coverage for all Directors and Officers, written in an amount which the Board deems adequate;

c) Workmen's Compensation, Employer's Liability Insurance, and other similar insurance, in the amount and in the forms now or hereafter acquired by Colorado law; and

d) Such other insurance as the Board deems prudent and appropriate for the Association.

9.5 Premiums. Insurance premiums for insurance carried by the Association shall be paid by the Association as a Common Expense. In the event there are insufficient funds generated from the Common Expense Assessment to cover the cost of insurance, then the deficiency shall be chargeable to each Owner by Special Assessment in accordance with Paragraph 6.4 hereof. Any such insurance assessment shall be exempt from any voting requirement of the Membership and shall be prorated among Owners in the same proportion as the Common Expense Assessment.

9.6 Separate Insurance. No Owner shall be entitled to exercise any right to acquire or maintain insurance coverage such as would limit or decrease the amount of insurance coverage which the Association, on behalf of all Owners, may realize under any insurance policy maintained by the Association; nor shall any Owner cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by an Owner.

9.7 Damage to Property. Any portion of the Property for which insurance is required under §38-33.3-313 of the Act and for which insurance is carried by the Association, shall be repaired or reconstructed by the Association in the event of loss.

9.8 Condemnation. If all or any part of the Property is taken by any authority having the power of eminent domain, all compensation and damages for such taking shall be consistent with §38-33.3-107.

**ARTICLE TEN: GENERAL MAINTENANCE OBLIGATION**

10.1 By Association. The Association shall be responsible for the proper maintenance, upkeep, repair and reconstruction of all Common Areas according to the Declaration, Bylaws, and Rules of the Association. The Association shall maintain Common Areas including any irrigation systems, municipal water taps, drainage improvements, and other appurtenances located and installed in such Common Areas.

10.2 By Owners. Each Owner shall keep his or her Lot and Residence, and all improvements and appurtenances, in good order, condition and repair, maintained in a clean, neat and presentable condition, all according to the Declaration and Rules of the Association.

**ARTICLE ELEVEN: DECLARANT RIGHTS**

11.1 Reservation. The Declarant reserves the following Development Rights and Special Declarant Rights ("Declarant Rights") that may be exercised anywhere within the Property during the period of Declarant control:

(a) To construct and complete improvements within the Property including Residences, Common Area improvements, and related appurtenances on the Property;

(b) To exercise any Declarant Rights reserved herein and/or specified in §§38-33.3-103(14), (29) or -210 of the Act;

(c) To construct, maintain and operate model homes and show homes, including business offices, sales offices, property management offices, parking and storage areas, construction staging areas, and other development facilities consistent with §38-33.3-215;

(d) To install and maintain construction signage or advertising signage in Common Areas and entryways;

(e) To use and to permit others to use easements through the Property and Common Areas as may be reasonably necessary for construction and for purposes of discharging Declarant's obligations under the Act and this Declaration;

(f) To appoint and/or remove any member of the Board or the ACC during the period of Declarant control, subject to the provisions of the Declaration and Association Bylaws;

(g) To merge or consolidate the Property with other real property or subject it to a Master Association;

(h) To amend the Declaration as may be permitted by the Act, in connection with the exercise of any Declarant Rights;

(i) To exercise any other Declarant Right created by any other provision of this Declaration or the Act; provided that such exercise is consistent with §38-33.3-210 of the Act.

11.2 Rights Transferable. Any Declarant Right created or reserved for the benefit of Declarant may be transferred and assigned to any person as the successor to Declarant, by written instrument identifying the transferee, describing Declarant Right(s) so transferred, and duly recorded in the real property records of Weld County, Colorado. Such instrument shall be executed as provided by §38-33.3-210 of the Act, and the transferee shall thereupon be and become the Declarant for all purposes of the Declarant Right(s) so transferred.

11.3 Limitation. Declarant Rights shall terminate at the option and election of the Declarant by written notice to the Association, or if not so terminated by Declarant, then such Declarant Rights shall automatically terminate sixty (60) days after the end of the period of Declarant control.

11.4 No Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule that may interfere with, diminish, limit or restrict the exercise of any Declarant Right without the prior written consent of Declarant which consent may be withheld in Declarant's sole discretion.

11.5 Use by Declarant. The exercise of any Declarant Right by Declarant, its agents, representatives, successors, assigns, contractors or affiliates shall not unreasonably interfere with the occupancy or use of any Lot by its Owner.

11.6 Models, Sales, Management Office; Signs and Marketing. The Declarant, its duly authorized agents, representatives and employees may maintain any Lot owned by Declarant or any affiliate, or any part of the Common Area, as a model Lot or Residence, including sales, leasing or property management offices. The Declarant reserves the right to post signage and marketing displays on Lots or Common Areas in order to promote sales of Lots, and reserves the right to conduct general sales activity in a businesslike manner until all Lots are sold.

11.7 Declarant's Easements. Pursuant to §38-33.3-216 the Declarant reserves the right to conduct construction work on Lots and Common Areas, to store construction materials, and to control and have the right to access all such work until completion, without the requirement of any consent or approval by the Board. The Declarant has an easement through all Lots and Common Areas as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising under the Act or reserved in this Declaration.

11.8 Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Property and Common Areas, unless such property is represented as being the property of the Association. The Declarant reserves the right to remove from the Property (promptly after sale of the last Lot) any and all such property, whether or not deemed fixtures.

**ARTICLE TWELVE: ELIGIBLE MORTGAGEES**

12.1 Special Provisions. Except as provided by statute in the case of condemnation or substantial loss to the Lots or Common Areas, the Association may not unilaterally without proper consent:

(a) change the Owners' allocated interests or the method or formula for calculating the Common Expense Assessments allocated to the Lots;

(b) partition or subdivide any Lot;

(c) seek to abandon, partition, subdivide or transfer the Common Areas; except that the granting of easements for public utilities or other public purposes is not a transfer within the meaning of this Section 12.1(c); or

(d) use insurance proceeds for loss to property (whether Lots or Common Areas) for any purpose other than for the repair, replacement or reconstruction of such property.

12.2 Implied Approval. Implied approval by an Eligible Mortgagee shall be presumed when an Eligible Mortgagee fails to respond in writing to any proposal for amendment within thirty (30) days after proper notice of such proposal, delivered by certified mail with return receipt requested.

12.3 Books and Records. Owners and Eligible Mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the Act and Bylaws.

**ARTICLE THIRTEEN: DURATION, AMENDMENT, TERMINATION**

13.1 Duration. The covenants, conditions, restrictions and obligations of this Declaration shall run with the land and bind the Property in perpetuity, unless and until this Declaration is terminated according to its terms.

13.2 Amendments by Owners. This Declaration may be amended by the written agreement of Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that no amendment may modify, limit, or restrict any Declarant Right during the period of Declarant control, and no amendment may change the single-family residential use to which all Lots are restricted. Any proposed amendment shall proceed according to § 38-33.3-217 of the Act. No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Declaration, Articles, or Bylaws, unless it is commenced within one (1) year from the effective date of said amendment.

13.3 Amendments by Declarant. At any time within the limits of Section 11.3, Declarant reserves the right to amend this Declaration without the consent of the Board, Owners, or Eligible Mortgagees, to make non-material changes such as clarifying or correcting technical, clerical, grammatical or typographical errors, or to comply with the Act or applicable lawful ordinance of the Town of Frederick.

13.4 Consent of Declarant Required. Notwithstanding anything to the contrary in this Declaration, no proposed amendment of any provision of this Declaration shall be effective during the period of Declarant control, unless Declarant has given its written consent to such amendment, which consent shall be evidenced by Declarant executing the certificate of amendment. Any expense associated with preparing and recording an amendment shall be allocated according to § 38-33.3-217(6) of the Act.

13.5 Termination. Except in the case of a taking of all Lots or Common Areas by condemnation, this Declaration may be terminated only by the written agreement of Owners to which at least seventy-five percent (75%) of the votes in the Association are allocated, including the consent of their Eligible Mortgagees if required by the Act, by an instrument(s) duly acknowledged, executed and recorded.

**ARTICLE FOURTEEN: ARCHITECTURAL CONTROL**

14.1 Architectural Control Committee. There is hereby established for the Property, a committee of the Board of Directors of the Association, to be known as the Architectural Control Committee ("ACC"). The number and qualifications of individual members of the ACC shall be as determined by the Board from time to time. With Board approval the ACC may adopt and publish written procedures and design guidelines, including Lot landscaping and irrigation systems designs, pursuant to which an Owner may submit to the ACC an application for proposed Improvements (defined below), for review and consideration by the ACC. The ACC may, with Board approval, charge a reasonable fee for reviewing application materials and may use such fees to engage the services of architects, contractors, engineers or other design consultants to assist in any review.

14.2 ACC Review and Approval Required. Except for existing Residences and established Improvements constructed by or on behalf of Declarant on Lots owned by Declarant or in the Common Areas, no new or additional building or structure, or exterior landscaping, construction, reconstruction, remodeling, alteration, installation, demolition, rebuilding or other improvement to a Lot (each, an "Improvement"), shall be commenced or constructed on the Property by or on behalf of any Owner, unless a complete set of reasonably-detailed Plans (defined below) for the proposed Improvement are first submitted to and approved by the ACC, prior to commencing any work.

14.3 Application to ACC. Applications for Improvements must be submitted to the ACC in writing, and ACC decisions shall be issued in writing, based on written Plans for the proposed Improvements. In the case of denial of any application, the ACC shall specify the reasons for denial in reasonable detail and shall suggest corrections or revisions to the Plans whereby the application might gain approval. If the ACC fails to issue a decision within thirty (30) calendar days after a complete application is submitted, then such submitted Plans shall be deemed approved by the ACC; provided, however, that the ACC may reasonably extend its review period for an additional fifteen (15) calendar days, by issuing written notice to the applying Owner during the first thirty (30) day review period.

14.4 Plans. The architectural, engineering, landscape, and/or construction plans, designs, drawings and specifications to be submitted by an Owner for any Improvement ("Plans"), shall describe the work in reasonable detail including all practical aspects and design elements of the proposed Improvement project, including its purpose, location, dimensions, elevations, architectural style, design elements, building materials, exterior color scheme, excavations and re-grading, irrigation, drainage, erosion control, construction schedule, and other matters reasonably related to such project, such as will enable the ACC to fairly consider the proposed Improvement project. Owners acknowledge and agree that Plans for Lot landscaping Improvements must comply with the water demand restrictions in **Exhibit B,** and that no landscape Plans or Improvements shall have the effect of increasing outdoor irrigation use beyond the approved Lot landscape designs reflected in **Exhibit B**. All proposed Improvements and any related Lot alterations shall demonstrate compatibility with existing Residences, structures and improvements, in terms of external design, architectural style, building materials, colors, scale, topography, and finish work. The

ACC may disapprove any incomplete or insufficiently detailed Plans and the same may be revised and re-submitted by an Owner.

14.5 Soils and Foundations. The Plans for any Improvement requiring structural modifications affecting a Residence, including structural, foundational work, or below-grade excavation, shall take into account the existing structure and the expansive, bentonite soils commonly found in the area of the Property, and such Plans shall provide for properly engineered structural and foundational elements and shall be drafted, stamped and certified by a Colorado registered professional engineer. The ACC may disapprove Plans that are not so stamped and certified.

14.6 Variance from Design Guidelines. Where unique circumstances such as Lot topography, setbacks, location of mature trees, rock outcroppings, aesthetic considerations including view corridors or solar easements, or as other site conditions may require, an Owner may request and the ACC may in its discretion grant, a reasonable variance from the strict application of these covenants and design guidelines, on such reasonable terms and conditions as the ACC may determine, and in such cases the ACC may solicit comment from adjoining Owners. Nothing in this Section shall obligate the ACC to grant any request and no such request may interfere with or adversely affect any adjacent Lot.

14.7 Diligence. Promptly after any ACC approval of Plans pursuant to this Article, the Owner shall proceed with reasonable diligence and cause the Improvements to be promptly and properly commenced, constructed and completed at the Owner's expense, in a workmanlike and diligent manner and according to all applicable building permits, building and fire codes, and other applicable laws and regulations.

14.8 No Liability Undertaken. The ACC does not undertake any technical review on behalf of any Owner nor does it purport to evaluate engineering sufficiency of any Plans or Improvements. Neither the Association nor its Board, the ACC, Declarant, or any Owner serving the ACC, shall be liable to any person or Owner who submits Plans, for any delay, or for any ACC review, approval, denial, or other act or omission related to ACC review of Plans. The Association does not by its review of Plans undertake any duty of care to any Owner, and each Owner submitting Plans to the ACC expressly acknowledges, covenants and represents that such Owner fully and exclusively relies on such Owner's own architect, engineer, contractor, or other consultant for the engineering and technical sufficiency of Plans and Improvements, and that the Association is fully released from any claim of liability or damages.

**ARTICLE FIFTEEN: GENERAL PROVISIONS**

15.1 Right of Action. The Association through its Board, and any aggrieved Owner, shall have an appropriate right of action against a defaulting Owner for failure to comply with the Declaration or Rules of the Association or with decisions of the Board made pursuant thereto. Owners shall have a similar right of action against the Association.

15.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association, and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

15.3 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included.

15.4 No Waiver. No provision in this Declaration shall be deemed waived or released by reason of delay or failure to enforce the same, irrespective of the number of violations that may occur.

15.5 Owner Mailing Addresses. Each Owner shall register his or her current mailing address with the Association, and except for monthly (or quarterly) statements and other routine notices, which may be sent by regular mail or electronically, all other notices or demands intended to be served shall be delivered personally or sent by prepaid certified mail, return receipt requested, to such registered mailing address. All notices, demands or other notices intended to be served upon the Board or the Association during the period of Declarant control shall be sent by prepaid first-class mail, addressed to the **Prosperity Homeowners Association, Inc., 2619 Canton Ct., Suite A, Fort Collins, Colorado 80525**.

15.6 Conflict. This Declaration is intended to comply with the requirements of the Act, as the same may be amended from time to time. If there is any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and any other Association document, this Declaration shall control.

15.7 Forum for Disputes. All disputed matters regarding the interpretation, application and enforcement of this Declaration that cannot be resolved shall be submitted to the courts of Weld County, Colorado where the Property is located, which court shall be the exclusive forum for disputes and shall have authority to award to the prevailing party its costs and expenses including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this ____day of ___________________________, 2022.

DECLARANT:
JABLONSKI FAMILY LLLP,
a Colorado limited liability limited partnership

By:____________________________
Richard T. Jablonski, General Partner

STATE OF COLORADO )
) ss.
COUNTY OF ________________ )

The foregoing Declaration was acknowledged before me this _____ day of ___________, 2022, by Richard T. Jablonski, as General Partner of Jablonski Family LLLP, the Declarant. Witness my hand and official seal:

___________________________________
Notary Public, State of Colorado

DRAFT

**INDEPENDENT BANK CORPORATION CONSENT**
**TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**
**OF PROSPERITY SUBDIVISION**

The undersigned Eligible Mortgagee does hereby consent to the foregoing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PROSPERITY SUBDIVISION.

**INDEPENDENT BANK CORPORATION:**

By:_____________________________
Howard Wigert, Vice President

STATE OF COLORADO )
) ss.
COUNTY OF ________________ )

The foregoing Consent was acknowledged before me this _____ day of ______________, 2022, by **Howard Wigert, Vice President** of Independent Bank Corporation. Witness my hand and official seal:

________________________________
Notary Public, State of Colorado

**PROSPERITY METROPOLITAN DISTRICT CONSENT**
**TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**
**OF PROSPERITY SUBDIVISION**

The undersigned Metropolitan District for the Property does hereby consent to the foregoing DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PROSPERITY SUBDIVISION.

**PROSPERITY METROPOLITAN DISTRICT:**

By:_____________________________
Thomas E. Studebaker, Director

STATE OF COLORADO )
) ss.
COUNTY OF ________________ )

The foregoing Consent was acknowledged before me this _____ day of ______________, 20___, by **Thomas E. Studebaker, Director** of Prosperity Metropolitan District. Witness my hand and official seal:

________________________________
Notary Public, State of Colorado

**EXHIBIT A**

LEGAL DESCRIPTION AND FINAL PLAT
OF THE PROSPERITY SUBDIVISION PROPERTY

**A TRACT OF LAND LOCATED IN THE NW 1/4 OF SECTION 32, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS:**
**THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN.**
**EXCEPTING THEREFROM THAT PORTION OF SAID LAND LYING WITHIN SAVANNAH SUBDIVISION, THE PLAT OF WHICH RECORDED SEPTEMBER 20, 2001 UNDER RECEPTION NO. 2885062, AND FURTHER EXCEPTING THAT PORTION AS DESCRIBED IN DECREE QUIETING TITLE RECORDED AUGUST 3, 2015 UNDER RECEPTION NO. 4130264.**

**EXHIBIT B**

**LOT LANDSCAPING STANDARDS**
**FOR**
**PROSPERITY SUBDIVISION**

# TOWN OF FREDERICK
# Board of Trustees
# Action Memorandum



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**Consideration of Building Permit Fee Waiver for Frederick Firestone Fire Protection District**

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**Agenda Date:** Town Board Meeting - April 25, 2023

**Attachments:** None

**Finance Review:** ______________________________
Administrative Services

**Submitted by:** Bryan Ostler, Town Manager
Ryan Johnson, Assistant Town Manager
Jason Meyers, Town Attorney

**Approved for Presentation:** Bryan Ostler
Town Manager

☐ Quasi-Judicial ☐ Legislative ☒ Administrative

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**Strategic Plan Alignment:**

- Fiscally Responsible Governance. The Town of Frederick plans for, identifies, leverages, and utilizes resources that reflect exemplary stewardship for those who live in Frederick and those who will seek out Frederick in the future.

- Safe & Secure. 5.2 Continue to foster and improve the relationship quality with public safety/emergency agencies seeking ways to collaborate and leverage resources where feasible.

**Summary Statement:**

The Board met with staff previously to discuss a waiver of fees for the Fire District's construction of a new fire station near Wyndham Hill. At that meeting, the Board directed staff to pull data from the previous waiver and do something similar. This memo is to follow up on that direction and ensure the Board has the information to make an informed decision.

**Detail of Issue/Request:**

In brief, in 2017 the Board waived all fees above and beyond a flat $2,500 for the previous fire station built at that time. In calculating the value of that waiver, staff determined that the fees in 2017 would have been just shy of $50,000 if the permit was pulled by a private developer. This is an important distinction because a portion of a typical permit fee includes sales/use taxes on the materials for the build. Without the sales/use tax being applied, the permit would have been about $28,000. The flat fee of $2,500 would constitute about a 91% reduction.

In calculating the current fee at today's rates, the total fee would be about $274,610 for a private development of the same magnitude. Similar to the 2017 analysis, a large portion of this total includes sales/use tax that we are not able to collect (which represents $157,500 of that total). Given the drastic difference in the calculated fees from the 2017 rates to the 2023 rates, staff wanted to bring the detail back to the Board for consideration to ensure the decision to waive fees includes all the relevant information.

Below is a break out of the fees calculated out with the assumption of a $9 million project, which is based upon representations made by FFFPD on 3/16/23. The amounts are subject to change as the bids are finalized by the District but we do not anticipate it to be drastically different.

| | 2017 (Calculated) | 2023 (Calculated) |
|---|---|---|
| Building Permit Fee | $ 8,163.75 | $ 34,808.75 |
| Plan Review Fee | $ 5,306.44 | $ 22,625.69 |
| Storm Water Capital Fee | $ 3,416.00 | $ 38,313.86 |
| Road Impact Fee | $ 3,686.00 | $ 8,144.00 |
| Public Safety Fee | N/A (not collected in 2017) | $ 8,418.30 |
| Electrical Permit Fee | $ 3,093.50 | $ 312.84 |
| Const. Meter Fee | $ 37.00 | $ 37.00 |
| Open Space Fee | $ 500.00 | $ 500.00 |
| Park Improvement Fee | $ 2,400.00 | $ 2,400.00 |
| Capital Improvement Fee | $ 1,500.00 | $ 1,500.00 |
| Technology Fee | $ 50.00 | $ 50.00 |
| TOTAL | $ 28,152.69 | $ 117,110.44 |
| | | |
| Exempt Tax | | |
| Sales/Use Tax | $ 21,250.00 | $ 112,500.00 |
| Public Safety Tax | N/A (not collected in 2017) | $ 45,000.00 |
| TOTAL | $ 21,250.00 | $ 157,500.00 |

**Legal Comments:**

The Board has discretion to waive fees applied to other governmental entities. At this time there is no set policy for fee waivers for other governmental entities.

**Alternatives/Options:**

The above chart is provided so that the Board can digest the information and various line items. The Board has a few options which include:

1) A total percent reduction similar to what was provided in 2017;
2) Setting a new total percent reduction;
3) Indicating which line items to waive and/or reduce and to what amount;
4) Provide no additional waiver beyond the sales/use tax which cannot be collected.

**Financial Considerations:**

The impact to the financials of the Town would be commensurate with the decision of the Board. The potential lost revenue is provided above.

**Staff Recommendation:**

Staff defers to the Board on the level of reduction the Board feels is appropriate.