



Town of Frederick Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, April 12, 2022

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

**7:00 PM
Regular Meeting**

Join Zoom Meeting

<https://us06web.zoom.us/j/86282312967>

Meeting ID: 862 8231 2967

One tap mobile

+12532158782,,86282312967# US (Tacoma)

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Dial by your location

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+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

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Meeting ID: 862 8231 2967

Find your local number: <https://us06web.zoom.us/u/kefaVuNcNT>

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Public Comment at a Virtual Meeting Board of Trustee Meeting

Interested parties who would like to address the Board of Trustees during the Public Comment portion of the agenda may address the Board of Trustees virtually or in person. **To address the Board in person, individuals may also appear at Town Hall (401 Locust Street Frederick, CO) and are asked to sign up on the sign-up sheet in the Board Room. Individuals who would like to attend virtually are asked to sign up to speak during public comment by emailing the Town Clerk at mmartinez@frederickco.gov. Individuals are asked to provide the Town Clerk the following information:

1. Name
2. Address
3. Topic for Comment
4. Phone Number or Name that will be utilized in the zoom meeting application
5. Any documents that will be shared in the meeting.

The Town Clerk will verify your attendance prior to the meeting and will test your connection and microphone.

If there are public hearings scheduled for the Board of Trustee meeting, individuals who wish to address the Board of Trustees virtually are asked to contact the Town Clerk via email at mmartinez@frederickco.gov by 5:00 PM on date of the meeting. Individuals are asked to provide the Town Clerk the following information:

1. Name
2. Address
3. Public Hearing Item for Comment
4. Phone Number or Name that will be utilized in the zoom meeting application
5. Any documents that will be shared in the meeting

**Individuals that would like to attend the meeting at Town Hall are asked to sign up on the public comment sheet in the board room.

Any individual who is attending the meeting and wishes to be address the Board of Trustees during Public Comment or a Public Hearing may utilize the “raise your hand” feature in the Zoom Meeting App.

How to raise your hand in Zoom

1. During the meeting, click on the icon labeled “Participants” at the bottom center of your PC or Mac screen
2. At the bottom of the window on the right side of the screen, click on the button labeled “Raise Hand.”



3. Your digital hand is now raised. Lower it by clicking the same button, now labeled “Lower Hand”
4. If you are on a mobile device, simply tap “Raise Hand” at the bottom left corner of the screen. The lower hand icon will turn blue and the text below it will switch to say “Lower Hand” while your hand is raised.



Town of Frederick Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, April 12, 2022

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:

Frederick High School Booster Club Community Funding Request – Chris Tone

Carbon Valley Half Marathon Community Funding Request – Monica

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 you are attending virtually, you may indicate that you would like to provide comments by utilizing the raise your hand function in the Participant Tab of the Zoom Meeting Application. 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. Town Clerk's 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 8, 2022 Minutes – Meghan Martinez, Town Clerk

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- D. March 22, 2022 Minutes – Meghan Martinez, Town Clerk
- E. Resolution 22-R-29 Adopting the Town of Frederick Outfall System Plan – Sarah Watson, Engineer
- F. Resolution 22-R-30 Accepting and Ratifying a Grant of Utility Easement from Sandra S. Halleck – Jason Berg, Engineer

Action Agenda:

- G. Resolution 22-R-31 Authorizing the Purchase of 1 Unit of C-BT Water from Danna Marie Ortiz – Sarah Watson, Engineer
- H. Resolution 22-R-32 Authorizing the Purchase of 6 Units of C-BT Water from Hank and Betty, Inc. – Sarah Watson, Engineer
- I. Resolution 22-R-33 Authorizing the Purchase of 7 Units of C-BT Water from Zabka Farms, LLC – Sarah Watson, Engineer
- J. Public Hearing Ordinance 1374 Amending Article 1 and Article 3 of the Frederick Land Use Code, Specifically Sections 1.15 and 3.4, to Clarify Locations within Town where Cemeteries may be Permitted – Ali van Deutekom, Planning Manager
- K. Resolution 22-R-34 Award a Contract for Silver Birch Boulevard and Godding Hollow Parkway Intersection Improvement Design and Authorizing the Town Manager to Execute the Contract – Jason Berg, Engineer
- L. Resolution 22-R-35 Authorizing the Termination of a Reservoir Reservation Easement – Sarah Watson, Engineer
- M. Ordinance 1375 Directing Town Staff to Seek Requests for Proposals for Auditing Services for the 2022 Fiscal Year – Jason Leslie, Administrative Services Officer

Mayor and Trustee Reports:

Adjournment:

ORGANIZATION SUMMARY

Organization Name: Frederick High School Booster Club

Mailing Address: 5690 Tipple Pkwy Frederick, Colorado 80504

Contact Person:

Amy Olson Booster Club President
Name Title

720-880-8364 N/A
Phone Number Fax Number

president@fhsbooster.com
Email Address

Federal Tax ID: 84-1589326 State Tax ID: 098116164

Please describe your project and the reason for your request:

Frederick High School is hosting the Class of 2022
senior car parade for graduating students. We are
requesting funds to reimburse town expenses, including
Town of Frederick police services, the parade temporary
use permit application fee, and public works fees.

Amount Requested: \$ 1370

Number of Town of Frederick Residents and/or visitors that will participate and/or benefit from the program you are proposing: 500

In what way will this program enhance the Town of Frederick's positive image, provide opportunity for informal education, community building and/or family entertainment:

The support of this event will demonstrate that the Town of Frederick supports surrounding area students, families, and school events which will positively influence the sense of community

Has your organization applied for a grant from the Town of Frederick before? YES ☒ NO ☐

How much did you receive? \$ _____

How was the grant money used?

We have used grant money in the past to also finance Town of Frederick Police and Public Works services and our permit application fee.

Were there funds left over? If so how those funds utilized by your organization?:

yes; we utilized these funds for student scholarships in 2020 and additional costs of hosting events due to unexpected COVID-19 protocols.

Please provide a list of organizations you have already solicited or will be soliciting)?:

N/A

Please include the following attachments:

1. Board of Directors and Key Staff noting any paid staff.
2. Copy of the IRS Determination Letter indicating Tax-Exempt Status of the organization.

Name and Signature of Organization's Project Chairperson:

Madison Kirschner, Student Council 303-833-3533
Name (Please Print) Sponsor Telephone Number

Madison Kirschner
Signature

3/8/22
Date

PROGRAM / PROJECT BUDGET

Program Name: Frederick High School Class of 2022 Senior Car Parade

Total Project Budget (Please Itemize):
(Personnel, Promotion, Supplies, Services, etc.)

Amount:

<u>Police Services</u>	<u>\$ 800</u>
<u>Public Works</u>	<u>\$ 270</u>
<u>Permit Application Fee</u>	<u>\$ 300</u>
<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>
<u> </u>	<u>\$</u>

Total Cost (A):

\$ 1370

Sources of Funding for the Program:
(Gifts and Grants pledged or paid)

Corporations:	<u>\$</u>
Foundations:	<u>\$</u>
Individuals:	<u>\$</u>
Government:	<u>\$</u>
Other:	<u>\$</u>

Total Funds Available (B)

\$

Balance Required (A minus B)

\$

Amount Requested:

\$ 1370

REQUEST FOR ADDITIONAL FUNDING

(COMPLETE ONLY IF REQUESTING FUNDS EXCEEDING \$500.00)

Funds Requested: \$1370

Please explain why your organization has requested additional funding: The cost of the Frederick High School Class of 2022 senior car parade exceeds \$500 with the Town of Frederick personnel and services needed to host the parade.



IRS Department of the Treasury
Internal Revenue Service

P.O. Box 2508
Cincinnati OH 45201

In reply refer to: 0752251399
Oct. 13, 2017 LTR 4168C 0
84-1589326 000000 00
Input Op: 0752251399 00020618
BODC: TE

FREDERICK HIGH SCHOOL BOOSTER CLUB
% PAMELA JOHNSON
PO BOX 903
FREDERICK CO 80530-0903



009637

Employer ID Number: 84-1589326
Form 990 required: Yes

Dear FREDERICK HIGH SCHOOL BOOSTER:

This is in response to your request dated Oct. 03, 2017, regarding your tax-exempt status.

We issued you a determination letter in July 2003, recognizing you as tax-exempt under Internal Revenue Code (IRC) Section 501(c)(03).

Our records also indicate you're not a private foundation as defined under IRC Section 509(a) because you're described in IRC Section 509(a)(2).

Donors can deduct contributions they make to you as provided in IRC Section 170. You're also qualified to receive tax deductible bequests, legacies, devises, transfers, or gifts under IRC Sections 2055, 2106, and 2522.

In the heading of this letter, we indicated whether you must file an annual information return. If a return is required, you must file Form 990, 990-EZ, 990-N, or 990-PF by the 15th day of the fifth month after the end of your annual accounting period. IRC Section 6033(j) provides that, if you don't file a required annual information return or notice for three consecutive years, your exempt status will be automatically revoked on the filing due date of the third required return or notice.

For tax forms, instructions, and publications, visit www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

If you have questions, call 1-877-829-5500 between 8 a.m. and 5 p.m., local time, Monday through Friday (Alaska and Hawaii follow Pacific Time).

0752251399

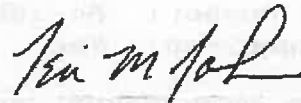
Oct. 13, 2017 LTR 4168C 0

84-1589326 000000 00

Input Op: 0752251399 00020619

FREDERICK HIGH SCHOOL BOOSTER CLUB
% PAMELA JOHNSON
PO BOX 903
FREDERICK CO 80530-0903

Sincerely yours,



Teri M. Johnson
Operations Manager, AM Ops. 3

ORGANIZATION SUMMARY

Organization Name: Carbon Valley Half Marathon Inc.

Mailing Address: 6456 Saddkeback Ave., Firestone, CO 80504

Contact Person:

Monica Vickers	President	
Name		Title
720-534-5295		
Phone Number	Fax Number	
mvickers@h-2e.com		
Email Address		

Federal Tax ID: 46-1942454 State Tax ID: 20131034483

Please describe your project and the reason for your request:

Since 2013 the Carbon Valley Half Marathon & 5K has brought thousands of people to the
Frederick and Firestone to show off our exceptional community. Our event is a non-profit race
that all the proceeds are giving to the Coloroad Children's Hospital for Autism Research. Families
deal with many challenges when a family member or friend has autism and this effects so many.
Our event has donated over \$130,000 to date and this will be our 10th year doing this. We could
not have this successful event without the support from our town and participants. Many participants
are local residents and have made this a family tradition! We love our town and appreciate all the
support given to us for the past 9 years. We are asking the town to return as a Champion Supporter.
This would be a generous \$1,000 donation and an in-kind donation of an Police Officer to help direct
traffic. The town would receive all the benefits of front-and-center media marketing and recognition
on our website , Facebook, and race T-shirts. The town is welcome to provide anything to add to
500 goodie bags as well. We appreciate the town's consideration to support our 10th annual event!

Amount Requested: \$ 1,000.00

Number of Town of Frederick Residents and/or visitors that will participate and/or benefit from the program you are proposing: 300-600

In what way will this program enhance the Town of Frederick's positive image, provide opportunity for informal education, community building and/or family entertainment:

Frederick's support of this event shows our community how events like this, for good causes are important. Events bring people from the community together as well as participants from all over that drive and even fly in which is great business for the town of Frederick.

Has your organization applied for a grant from the Town of Frederick before? YES X NO

How much did you receive? \$ 1,000

How was the grant money used?

The previous years money was used to help our event be successful. This event requires timing mats and timing company as well as portable potties. We do have a lot of sponsors that help as well as volunteers.

Were there funds left over? If so how those funds utilized by your organization?:

Yes, our goal is to always make donations with the funds from our event are left over. To date we have been able to donate over \$130,000 with the help from so many sponsors.

Please provide a list of organizations you have already solicited or will be soliciting)?:

Town of Firestone, Ward Electric, JoyForWard, Carbon Valley Eye Care, Centennial Lending, United Power, Eldorado, ShortD's, Caldwell Bankers, and Denver Lighting and DJ Services.

Please include the following attachments:

1. Board of Directors and Key Staff noting any paid staff.
2. Copy of the IRS Determination Letter indicating Tax-Exempt Status of the organization.

Name and Signature of Organization's Project Chairperson:

<u>Monica Vickers</u>	<u>720-534-5295</u>
Name (Please Print)	Telephone Number
<u>Monica Vickers</u>	<u>04/03/22</u>
Signature	Date

PROGRAM / PROJECT BUDGET

Program Name: Carbon Valley Half Marathon

Total Project Budget (Please Itemize):
(Personnel, Promotion, Supplies, Services, etc.)

Amount:

<u>Participants, volunteers, T-shirts and goodie bags</u>	<u>\$ 8,000.00</u>
<u>Awards</u>	<u>\$ 3,000.00</u>
<u>Marketing</u>	<u>\$ 1500.00</u>
<u>Chip timing services</u>	<u>\$ 1500.00</u>
<u>Police and Ambulance Services</u>	<u>\$ 1200.00</u>
<u>Rentals</u>	<u>\$ 1200.00</u>
<u>Permits</u>	<u>\$ 500.00</u>
<u>Licenses</u>	<u>\$ 25.00</u>
<u>Donation to Children's Hospital</u>	<u>\$ 25,000</u>
<u> </u>	<u>\$</u>

Total Cost (A):

\$ 42,525.00

Sources of Funding for the Program:
(Gifts and Grants pledged or paid)

Corporations:	<u>\$ 7,500.00</u>
Foundations:	<u>\$</u>
Individuals:	<u>\$ 33,025.00</u>
Government:	<u>\$ 2000.00</u>
Other:	<u>\$</u>

Total Funds Available (B)

\$ 42,525.00

Balance Required (A minus B)

\$ 1,000.00

Amount Requested:

\$ 1,000.00

REQUEST FOR ADDITIONAL FUNDING

(COMPLETE ONLY IF REQUESTING FUNDS EXCEEDING \$500.00)

Funds Requested: 1,000.00

Please explain why your organization has requested additional funding: _____

This is a significant event for families or our community. It brings many different organizations together such as the local schools, the business community, the Chamber of Commerce, Frederick, Firestone, Longmont, Mead and Erie. The conversation around our event is always positive and includes recognition of our great community. People move to our community due to events like ours. Gains a lot of respect when the Town supports a charitable event like this and shows how important the Town feels about families and healthy habits and having fun. We need the towns support to make our impact greater each year.



Town of Frederick Memorandum

TO: Honorable Mayor and Board of Trustees

FROM: Bryan Ostler, Town Manager

DATE: April 12, 2022

CC: Town Staff
Local Media

SUBJECT: Departmental Report

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 recommended for Board discussion (all meetings will be held in the Town Board Chambers unless otherwise indicated):

- April 12th, Regular Meeting
 - April 19th – FURA and Work Session
 - April 26th – Regular Meeting
 - May 3rd – Work Session
 - May 10th – Regular Meeting
 - May 17th – FURA and Work Session
 - May 24th – Regular Meeting
 - May 31st – No Meeting – 5th Tuesday
-

Police Department

New Police Officers:

- Two newly hired Police Officers started on Monday and have begun their field training. Officer Urie VonFeldt comes to us from the University of Colorado Police Department where he has spent several years in various different assignments. Officer Anthony Fountain comes to us from the Adams County Sheriff's Office where he has spent the last three years as a Corrections Officer. Were excited to have them on board as valued and experienced team members.

Body Cameras:

- As part of the 2022 budget and a recently awarded grant, the Police Department was able to purchase updated body worn cameras. The new cameras have several upgrades in technology that includes higher resolution video and an LTE (Cellular) connection that enables real-time

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features like live video streaming and GPS locations. This allows added safeguards for the officers and enhances the documentation of their day-to-day activities.

Communications and Engagement

Communications:

- The Community Survey has been sent out to the initial 2700 selected households. We received 467 responses to the survey, which puts us ahead of the 2018 total of 409 responses. Open survey participation ended April 6. Results with analysis will be ready in mid-May.
- Angela and Jessica attended Crisis Communication Training in Greeley on March 29 & 30.
- Jessica participated in the ESPIOC monthly training.
- Angela meeting with FHS Education Foundation.
- Attended Carbon Valley chamber after hours.
- Participated in ELGL online training for community engagement.
- The new communications team van is done and being prepped for summer events. Thank you to John Ober, and the entire Fleet Services team for coordinating the project and setting the events team up for success. Also, thank you to Zach Mahone for the graphic design for the van wrap.

Events:

- Local businesses are committing to event sponsorships. We have \$56,750.00 in pledges to date. Our 2022 goal is \$125,000.00.
- Communications & Engagement Intern selected. Violet will be starting in early May.
- Volunteers have handed out almost 300 landfill vouchers. Residents can pick up their free landfill voucher March 28 – April 29. Vouchers valid April 1 – 30.
- We'll be celebrating Arbor Day in the elementary schools on Thursday, April 28. Celebrations include a talk from a forester and a poster contest.
- Jessica attended Colorado Municipal Special Events Alliance group to discuss event trends and best practices on April 7.
- Jessica attended the Weld County Health Department Temp. Event Coordinator meeting.

Design:

- Election video
- Sub Are One Sheeter design
- Bella hiring poster
- Roadwork video planning in progress

Finance Department

Finance:

- 2021 Fiscal Year Audit and fieldwork.

Planning Department

Development Application:

- 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 eleven projects that have completed the pre-application step. There are currently three neighborhood meetings scheduled. Nine 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

<i>New Applications Project Name (Date of Application)</i>	<i>Subdivision</i>	<i>General Location</i>	<i>Brief Description</i>

<i>On Going Projects Project Name (Date of Application)</i>	<i>Subdivision</i>	<i>General Location</i>	<i>Brief Description</i>
Bear Industrial Park, Block 1, Lot 8 4210 Bruin Site Plan (02/16/2021)	Bear Industrial Park	4210 Bruin	Site plan for 15,000 sf office and warehouse building for crane company.
Bear Industrial Park Replat 5, Block 1 Lot 2 (10/18/2021)	Bear Industrial Park	4021 Kodiak	Plan for a 1,000 sq. ft. facility with outdoor storage.
Bear Industrial Park Replat 2 Block 2 Lot 1 (1/18/2022)	Bear Industrial Park	4160 Busch Place	Proposed 28,000 sq. ft. warehouse with outdoor space.
Colorado Blvd & Godding Hollow 7-11 Zoning and Final Plat (5/3/2021)		Southwest corner of Colorado Blvd and Godding Hollow	Zone 5.35-acre parcel and plat to create two lots. Northern lot will have a site plan processed for 7- 11.
Colorado Blvd & Godding Hollow Conditional Use Site Plan (5/3/2021)		Southwest corner of Colorado Blvd and Godding Hollow	Development of southern parcel of land. Users not yet determined.
Eagle Business Park Filing 4B Lot 1 (1/18/2022)	Eagle Business Park	4881 Eagle	Proposed 4,800 sq. ft single story building with outdoor storage.
Eagle Business Park Filing 3 Lot 1B (1/18/2022)	Eagle Business Park	7400 Eagle	Temporary lot for construction trailers for Agilent. Also updating grading and drainage.
Eagle Business Park Lot 1 Agilent (2/07/2022)	Eagle Business Park	7400 Eagle Blvd	Site plan amendment to construct a new manufacturing building and warehouse building on the existing Agilent site.
Frederick Town Amendment B Lot 1-501 Walnut (9/8/2021)	Downtown	501 Walnut	Redevelop existing building into co-working office space.
Meadowlark Business Park Replat A (5/17/2021)	Meadowlark Business Park	5660 Iris Parkway	Request to divide the lot into 2 lots and a new 14,000 sq. ft. office building on the south lot.
Miners Park Town Center Filing 2 Block 1 (1/11/2022)		North of hwy 52 between Colorado Blvd and Maple Street	Proposed changes to zoning boundaries with keeping the current zoning.
Nelson Farms (1/3/2022)		Southwest corner of Silver Birch Blvd and Tipple Blvd	Proposed residential development on 236 acres

No Name Creek West Block 4 (12/6/2021)	No Name Creek West	9050 Harlequin Circle	Subdividing Lots.
<i>Project Name (Date of Application)</i>	<i>Subdivision</i>	<i>General Location</i>	<i>Brief Description</i>
Prairie Greens II (12/7/2020)	Prairie Greens	6460 Frederick Way	Request for vacation of easement and preliminary design for phase 4.
Raspberry Hill Business Park Lot 13	Raspberry Hill	8274 Raspberry Way	Proposed office building and sales of pickup trucks.
Raspberry Hill Business Park Lot 2 & 3 Truck Ranch (8/13/2021)	Raspberry Hill	8273 Raspberry Way	Site plan to build pickup truck dealership.
Raspberry Hill Business Park -Lots 4 &5 Phasing Plan	Raspberry Hill Business Park	8515 and 8517 Raspberry Way	Proposed vacant building for future unknown tenant.
Sanitation District Annexation No. 1 Subdivision Amendment (8/16/2021)		8500 Colorado Blvd.	Subdivision amendment to subdivide existing lot into 2 separate lots.
Silverstone Filing 7 (1/18/2021)	Silverstone		Development of 581 residential homes.
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.
Wyndham Hill Filing 6 Replat A FFFPD Station 5 Site Plan (6/7/2021)	Wyndham Hill	Generally, north of Highway 52, West of I-25 on Glacier Way.	Proposed fire station to include 3 bays.

Public Works Department

Streets:

- Street sweeping downtown areas, Glacier View, Wyndham Hills
- Patching on 202 Tipple Parkway for water line repair, cleaning out snow and ice.
- Remove and repair stop signs from traffic accidents
- Pothole repairs in Rinn Valley, Downtown Area, Eagle, Residents Concerns
- 3/17/22 – plows out checking for snow and ice
- Repairing broken delineators – Tipple Parkway – West of I-25
- Streets crew assisting parks with resurfacing entrance and road in FRA
- Grading of County Roads 14 and 17

Water:

- Monthly water reads and rereads
- 135 locates completed, 17 final reads
- 6 new meter installs

- 14 older meters replaced
- Finished marking municipal service lines in No Name and Downtown Area.

Buildings:

- Going over buildings monthly checklists
- Prepping and installation for new storage building wellness house
- Assemble furniture for PW new offices
- Repair floor plugs at Bella Rosa Clubhouse
- Helping set up for elections
- 311 5th Street – 401 Locust Street building inspections interior, exterior, systems and grounds
- 105 5th Street, 5830 Bella Rosa Parkway, 7301 Eagle Boulevard, 333 5th Street, 318 4th Street, 350 4th Street, 323 5th Street – building inspections interior, exterior, systems, and grounds.

Storm Water:

- Monthly checks of clearing debris from inlets and outlets from drainage

Fleet Services:

- 19 total logged service requests
- 14 scheduled: PW 6; FFFPD 2; PD 6
- 5 unscheduled: PW 2; FFFPD 1; PD 2
- New events van undelivered – 4/1/22
- New irrigation transit van delivered to Parks Department 4/4/22
- New water transit van delivered to Public Works Department 4/4/22

Miscellaneous:

- Hauling debris stock piled at Public Works site to dumpsite in Ft Lupton 3/26/22 – 1st day of tree limb drop off – 19 total drops

Training:

- Damon Jones, Gage Robertson, Bryce Shirley – Hands On Sweeper training
- Gage Robertson, Bryce Shirley, Damon Jones, Teo Martinez – attending classes for details about signage, pavement markings, and MUTCD training.



Town of Frederick Memorandum

TO: Honorable Mayor Tracie Crites and Board of Trustees

FROM: Meghan Martinez, Town Clerk

DATE: April 8, 2022

SUBJECT: Town Clerk's Report

- *Commission/Committee Updates*
 - Scholarship Committee
 - The committee has a new member this year....Aaron Marquez has accepted Mayor Crites invitation as a member of the committee.
- *2022 Municipal Election*
 - The 2022 Election will be completed at the end of next week and official results will be certified by the Clerk's Office.
 - Thank you to Election Judges Nancy Bergen, Sue Pilon, Iris Boss, Kathy Bartz, Bonnie Ginther and Sue Chestek as well as Junior Election Judges Jordan and Annie.
- *Municipal Court*
 - The Clerk's Office staff is working with finance to begin implementation of a new court software to streamline processes, create efficiencies as well as tie into our new financial software.
 - The Assistant Town Clerk – Municipal Court recruitment is ongoing.
- *Frederick Arts Commission*
 - Deputy Town Clerk Taylor Kittilson is working with the commission to complete condition surveys of all of the Town art.
 - A new art piece is on display at the Engineering Services Building called Voice in Forest. The piece was donated to the Town by Candy Issa.
- *Facilities Master Plan*
 - The students have incorporated the survey results in the plan and are clearing up questions with department heads. We hope to have a final draft in the next month or so.

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Town of Frederick Board of Trustees

Regular Hybrid Board Meeting Minutes

Frederick Town Hall, 401 Locust Street

March 8, 2022

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

Roll Call: Present were Mayor Crites, Mayor Pro Tem March and Trustees Mahan, Lamach, O'Neal Brown and Padia. Also present were Town Manager Bryan Ostler, Town Attorney Jason Meyers and Town Clerk Meghan Martinez.

Approval of Agenda: Mayor Crites indicated that the candidates were invited to introduce themselves before Mayor and Trustee reports.

Public Comment:

Mayor Crites indicated that no one had signed up for public comment.

Staff Reports:

Administrative Report: Town Manager Bryan Ostler provided a written report. Administrative Services Officer Jason Leslie provided an update on the financial software transition.

Town 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 included the following items:

- Resolution 22-R-17 Accepting Deed of Dedication for Right-of-Way for Tipple Parkway
- Resolution 22-R-18 Accepting that certain Perpetual Non-Exclusive Pedestrian and Utility Easement for St Vrain Valley School District

Upon roll call vote, motion passed unanimously.

Action Agenda:

Resolution 22-R-19 Authorizing the Mayor to Execute the First Amendment to the Nelson Lakes Subdivision MOAPI: Engineer Sarah Watson presented the proposed resolution. Motion by Mayor Pro Tem March and seconded by Trustee Lamach to approve Resolution 22-R-19 with the exhibits presented by Engineer Watson. Upon roll call vote, motion passed unanimously.

Public Hearing Ordinance 1373 Adding a Section to Chapter 18 Building Regulations of the Frederick Municipal Code:

At 7:17 Mayor Crites opened the public hearing.

Chief Building Inspector Chuck Sandifer presented the proposed ordinance.

At 7:21 Mayor Crites closed the public hearing.

Built on What Matters.

Motion by Mayor Pro Tem March and seconded by Trustee Padia to approve Ordinance 1373. Upon roll call vote, motion passed unanimously.

Resolution 22-R-20 Award a Contract for 2022 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 22-R-20. Upon roll call vote, motion passed unanimously.

Resolution 22-R-21 Award a Contract for Colorado Boulevard Mill and Overlay 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 Lamach to approve Resolution 22-R-21. Upon roll call vote, motion passed unanimously.

Resolution 22-R-22 Award a Contract for the 2022 Seal Project – 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 Mahan to approve Resolution 22-R-22. Upon roll call vote, motion passed unanimously.

Public Hearing Penrose Rezone:

Interim Planning Manager Ali van Deutekom presented the proposed rezone.

At 7:43 Mayor Crites opened the public hearing and noted that the staff presentation would be included in the public hearing.

Applicants Shane Rugg and Joey Reale addressed the Board and were available for questions.

At 8:09 Mayor Crites closed the public hearing.

Motion by Trustee Mahan and seconded by Trustee Padia that the Penrose Rezone, case no. 2021-028 be approved based on the review criteria found in the Town Land Use Code Section 4.7.2, 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. Upon roll call vote, motion passed 4-2 with Mayor Pro Tem March and Trustee O'Neal voting no.

Candidate Introductions:

Chad teVelde introduced himself and discussed his candidacy.

Mayor and Trustee Reports:

Mayor Pro Tem March: He mentioned the vehicle break-ins in the community.

Trustee Brown: He mentioned the FHS Basketball team's state tournament berth. He asked if the Town could put together some pre-game snacks as a send-off.

Trustee Lamach: He asked about the meetings on March 29th and April 5th. He also mentioned a downed sign. He attended the rosary for Carmine DeSantis.

Trustee O'Neal: The banners on 5th street are great!

Mayor Crites: She mentioned the candidate forum the previous night and encouraged the board to watch the video. She would like the board to meet to discuss the ideas that were brought up.

Motion by Mayor Pro Tem March and seconded by Trustee Brown to go into executive session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) regarding Water Development Policy. Upon roll call vote, motion passed unanimously.

Motion by Trustee ONeal and seconded by Trustee Mahan to go into executive session for a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) regarding Right-of -Way Acquisition. Upon roll call vote, motion passed unanimously.

At 9:00 Mayor Crites recessed the meeting to go into executive session.

At 11:10 Mayor Crites reconvened the meeting.

Motion by Mayor Pro Tem March and seconded by Trustee Brown to move forward with right-of-way acquisition as discussed in executive session. Upon roll call vote, motion passed unanimously.

There being no further business of the Board, Mayor Crites adjourned the meeting at 11:10 PM.

Approved by the Board of Trustees:

ATTEST:

Tracie Crites, Mayor

Meghan C. Martinez, MMC, Town Clerk



Town of Frederick Board of Trustees

Regular Hybrid Board Meeting Minutes

Frederick Town Hall, 401 Locust Street

March 22, 2022

Call to Order: At 6:42 Mayor Crites called the meeting to order and requested roll call.

Roll Call: Present were Mayor Crites, Mayor Pro Tem March and Trustees Mahan, Lamach, O'Neal Brown and Padia. Also present were Town Manager Bryan Ostler, Town Attorney Jason Meyers and Town Clerk Meghan Martinez.

Executive Session: Motion by Trustee Brown and seconded by Trustee O'Neal 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 water.

At 6:49 Mayor Crites recessed the meeting of the Board of Trustees.

At 7:35 Mayor Crites reconvened the meeting of the Board of Trustees.

Approval of Agenda: Mayor Crites added a special presentation from the Carbon Valley Park and Rec District to the Special Presentations agenda.

Special Presentations:

Carbon Valley Parks and Recreation District Update: Dean Rummel provided a 2022 update.

Public Comment:

Mayor Crites indicated that no one had signed up for public comment.

Staff Reports:

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

Town 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 included the following items:

- February 1, 2022 Minutes
- February 8, 2022 Minutes
- February 22, 2022 Minutes
- List of Bills

Upon roll call vote, motion passed unanimously.

Action Agenda:

Built on What Matters.

Resolution 22-R-24 Award a Contract for the 2022 Concrete and Alleyway Maintenance Program and Authorizing the Town Manager to Execute the Contract: Engineer Jason Berg presented the proposed resolution. He noted that the AM misidentified the contractor. Motion by Trustee ONeal and seconded by Trustee Mahan to approve Resolution 22-R-24. Upon roll call vote, motion passed unanimously.

Resolution 22-R-25 Award a Contract for the Colorado Boulevard and Tipple Parkway Intersection Improvement Project and Authorizing the Town Manager to Execute the Contract: Engineer Jason Berg presented the proposed resolution. Motion by Trustee ONeal and seconded by Trustee Brown to approve Resolution 22-R-25. Upon roll call vote, motion passed unanimously.

Resolution 22-R-26 Adopting the Town of Frederick 2022 Water Efficiency Plan: Engineering Director Sarah Watson presented the proposed resolution. Motion by Mayor Pro Tem March and seconded by Trustee Lamach to approve resolution 22-R-26. Upon roll call vote, motion passed unanimously.

At 7:35 Mayor Crites called for a brief recess.

At 7:45 Mayor Crites reconvened the meeting of the Board of Trustees.

Consideration of the 25/52 East Subarea Plan: Assistant Town Manager Ryan Johnson presented the proposed plan. Robert Kain with Hausel Lavinge addressed the Board. Phil Irwin spoke on behalf of the Nelson Family in support of the plan. Motion by Mayor Pro Tem March and seconded by Trustee Padia to ratify the decision of the Planning Commission and designate the Town of Frederick 25/52 East Subarea Plan as a supplement to the Comprehensive Plan; 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. Upon roll call vote, motion passed unanimously.

At 9:48 Mayor Crites called for a brief recess.

At 10:13 Mayor Crites reconvened the meeting.

Motion by Trustee ONeal and seconded by Trustee Brown to extend the meeting for 30 minutes. Upon roll call vote, motion passed unanimously.

Discussion Agenda:

Assistant Town Manager Ryan Johnson outlined some options related to fencing permits and neighborhood services.

Mayor and Trustee Reports:

Motion by Trustee ONeal and seconded by Mayor Pro Tem March to extend the meeting for 30 minutes. Upon roll call vote, motion passed unanimously.

Motion by Trustee Mahan and seconded by Trustee Lamach to approve the purchase of 60 shares of CBT from the Gareth R. Olson Trust. Upon roll call vote, motion passed unanimously.

Motion by Trustee Mahan and seconded by Trustee Brown to authorize staff to move forward with negotiations for additional shares of CBT as discussed in executive session. Upon roll call vote, motion passed unanimously.

Motion by Mayor Pro Tem March and seconded by Trustee Brown to go into executive session for the purpose of determining positions relative to matters that may be subject to negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e)(1) regarding economic development. Upon roll call vote, motion passed unanimously.

At 11:30 Mayor Crites recessed the meeting to go into executive session.

At 12:31 Mayor Crites reconvened the meeting.

Motion by Trustee Brown and seconded by Trustee Mahan to move forward with incentives as discussed in executive session. Upon roll call vote, motion passed unanimously.

There being no further business of the Board, Mayor Crites adjourned the meeting at 12:32 AM.

Approved by the Board of Trustees:

ATTEST:

Tracie Crites, Mayor

Meghan C. Martinez, MMC, Town Clerk



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Rusty O'Neal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

Outfall System Plan Adoption

Agenda Date: Town Board Meeting – April 12, 2022

Attachments:

- a. [Outfall System Plan](#)
- b. Resolution 22-R-29

Finance Review:

Administrative Services

Submitted by:

Sarah Watson

Civil Engineer I

Approved for Presentation:



Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

Strategic Plan Alignment:

This Outfall System Plan aligns with the Town's Strategic, Reliable & Sustainable Infrastructure Plan

- Frederick is dedicated to investing in existing and future transportation, water, stormwater, and technology while planning for sustainable growth and development. Frederick takes steps to implement all adopted plans.

Summary Statement:

This Outfall System Plan updates and replaced the current Master Drainage Plan for the region. This item was presented at the March 1, 2022 Study Session and feedback from the Board was incorporated to this draft of the plan.

Detail of Issue/Request:

Built on What Matters.

The current plan that the Town has adopted is the Southwest County Master Drainage Plan which was completed by Anderson Consulting Engineers in 1999. This plan covers the Tri-Area and Godding Hollow Basins. These are not the only basins that the Town's Boundary and Planning area intersect. The Frederick Dacono Outfall System Plan will include Boulder Creek, Godding Hollow, Idaho Creek, Little Dry Creek, Tri-Town, and Sump basins which the Town Planning area crosses or is impacted by as shown on the basin map.

The Town partnered with Dacono on the plan update through a Department of Local Affairs (DOLA) Grant. As you can see on the basin map many of the basins are also impacted by Dacono. The DOLA Grant provided \$384,550 matching funds for the project. Given the impacts of crossings of SH 52 it has been beneficial to work in conjunction with Dacono on the plan update. This will also aid the Town in the future for protentional partnerships to improve crossing structures along SH 52.

These types of Master Drainage Plans only have a shelf-life of about 20-30 years. This is due to development, changes in industry practices, and changes in the community. The 2020 census has identified that the population is above 10,000 which will trigger the Town to meet requirements of the MS4 permit. Frederick has grown significantly since the original 1999 study and the scope of the study needs to be expanded to include the multiple basins the Town Planning Area intersects.

Since the project was awarded to Anderson Consulting Engineers in 2020, they have analyzed the baseline hydrology, future condition hydrology, and completed problem identification. They are currently working towards identifying and evaluating conceptual improvements. The consultant was worked with staff to select a preferred plan, prepare cost estimates, and prioritize the improvements identified by the plan.

Tonight, we will discuss the progress that Anderson Consulting Engineers has made and the proposed improvements that have been identified through the planning process to improve the Town's drainage system. A total of 54 improvements have been identified. The proposed improvements have been ranked using a decision matrix based on:

- Risk
- Total project cost
- Alternative funding availability
- Community timeframe.

The projects identified in the 2022 CIP list for design in 2022, improvement to the existing crossing at Bella Rosa Parkway and No Name Creek and the crossings at Colorado Boulevard adjacent to the Golf Course, are within the top 10 projects ranked in priority for all basins.

The proposed improvement map within the StoryMap that Anderson Consulting Engineers has created is an interactive way for the public and staff to identify locations of future improvements, the improvement proposed, and the projected cost of the improvement. This list of proposed improvements will be used by staff to guide future stormwater improvements for the next 20-30 years.

Legal Comments:

The resolution for adoption of the OSP has been reviewed by the Town Attorney.

Alternatives/Options:

By accepting the funds from DOLA the Town is committed to completing the project within the terms and guidelines of the agreement with the State.

Financial Considerations:

To date the Town has paid \$460,000 of the \$460,000 the Town has committed towards the project per the DOLA grant application. Per the IGA with Dacono for reimbursement of payments to the consultant they have also paid \$309,100 of the \$309,100 they committed to the project.

Staff Recommendation:

Staff recommends the Board approval resolution 22-R-29 to approve and adopt the Outfall System Plan.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 22-R-29**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
ADOPTING THE TOWN OF FREDERICK OUTFALL SYSTEM PLAN**

WHEREAS, the Town retained the consultant team from Anderson Consulting Engineers, Inc. (ACE), to assist with the creation of an Outfall System Plan for the Town of Frederick and the City of Dacono; and

WHEREAS, the Town and the City of Dacono were approved for a grant from the Department of Local Affairs (DOLA); and

WHEREAS, The Town and the City of Dacono entered into a reimbursement agreement for work done by ACE; and

WHEREAS, ACE used a process that delivered technical expertise and involvement from Town staff and City of Dacono staff; and

WHEREAS, the Town, City of Dacono, and ACE engaged in an iterative process to develop the Outfall System Plan, which describes the Town's stormwater system and sets out an extensive list of future improvements and strategies for the Town to address stormwater drainage issues; and

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, held a public work session on August 24th, 2021 and March 1st, 2022 and considered the Outfall System Plan as an official document and policy of the Town of Frederick.

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

- Section 1. Approval of Plan.** The Board of Trustees finds approval of the Outfall System Plan to be in the best interest of the Town of Frederick, and hereby approves the plan, which is attached as **Exhibit A** to this Resolution.
- Section 2. Submittal of Plan.** The Board of Trustees authorize staff to submit the Outfall System Plan to DOLA to complete the grant requirements.
- Section 3. Effective Date.** This resolution shall become effective immediately upon adoption.
- Section 4. Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.
- Section 5. Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED AND ADOPTED THIS 12TH DAY OF APRIL, 2022.

ATTEST:

TOWN OF FREDERICK:

By: _____
Meghan C. Martinez, MMC, Town Clerk

By: _____
Tracie Crites, Mayor

EXHIBIT A
(Outfall System Plan)



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Tracie Crites, Mayor

Dan March, Mayor Pro Tem
Adam Mahan, Trustee
Kevin Brown, Trustee

Mark Lamach, Trustee
Rusty O'Neal, Trustee
Windi Padia, Trustee

Consideration of Resolution to Ratify Grant of Easement

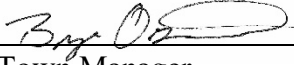
Agenda Date: Town Board Meeting – April 12, 2022

Attachments:

- a. Grant of Easement Documents
- b. Plan Sheet
- c. Resolution 22-R-30

Finance Review: _____
Finance Director

Submitted by: _____
Jason Berg, E.I.
Civil Engineer

Approved for Presentation: _____

Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

Town Board ratification of the Grant of Utility Easement at the northwest corner of the Colorado Boulevard and Tipple Parkway intersection on the Shrek and Halleck subdivision properties owned by Sandra S. Halleck and signed by the Town Manager.

Detail of Issue/Request:

A Grant of Easement to the Town of Frederick for a Utility Easement at the northwest corner of the Colorado Boulevard and Tipple Parkway intersection on the Shrek and Halleck properties has been signed by the property owner and Town Manager. The easement is necessary for the relocation of utilities related to the Colorado Boulevard and Tipple Parkway Intersection Improvement project.

As seen in the attached Grant of Easement documents and CTII plan sheet the easement is covering 2625.19-square feet. The Utility Easement will be utilized for the relocation of a Town owned raw water pipeline, Black Hills Energy gas line and Comcast fiberoptic communication line

Legal Comments:

The Town Attorney reviewed the Grant of Easement and prepared the Resolution.

Alternatives/Options:

The Town Board may choose whether or not to accept the Grant of Easement.

Financial Considerations:

Without the Grant of Easement on the Shrek and Halleck properties the Town will not be able to relocate utilities found to be in conflict with the construction of the public improvements at the northwest corner of the Colorado Boulevard and Tipple Parkway Intersection Improvement project for which the Town has budgeted and awarded funds.

Staff Recommendation:

Staff recommends approval of the Resolutions 22-R-30 as presented accepting the Grant of Easement.

UTILITY EASEMENT AGREEMENT

Sandra S Halleck, a individual (Child of God) whose legal address is 5704 CR 22, Longmont, Colorado 80504 ("GRANTOR"), is the fee-simple owner of that certain real property described in **Exhibit A** attached hereto and incorporated by this reference ("GRANTOR PROPERTY").

For good and valuable consideration, the receipt and sufficiency whereof are acknowledged, Grantor does hereby grant, bargain, sell, transfer, and convey to the **Town of Frederick**, a Colorado statutory town whose address is 401 Locust Street, P.O. Box 435, Frederick, Colorado 80530 ("TOWN"), its successors, agents, and assigns, a non-exclusive, perpetual utility easement ("EASEMENT"), with the right to erect, construct, install, and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove utility lines, including but not limited to sanitary sewer, storm drainage, water, electric, and other compatible uses ("IMPROVEMENTS") in and across the following-described real property owned by Grantor in Weld County, State of Colorado:

[Property Description]

Together with the right of ingress and egress over Grantor's real property for the purposes for which the above-mentioned rights are granted. The easement hereby granted shall be 25-feet in width, which shall be located across the above-described real property as described on the attached **Exhibit B**, which is incorporated herein by reference for all purposes.

Town agrees to maintain such Easement in a state of good repair and efficiency so that no material damages to Grantor's premises will result from Town's use. Grantor reserves the right to use the property in any manner provided such usage does not interfere with Town's rights hereunder. All utility lines installed hereunder shall be covered by a minimum of 36-inches of soil, with the exception of storm water drainage, which may be subsurface or surface drainage. Grantor shall not intentionally cause the original cover over said utility lines to be reduced below whichever is the greater of the original cover of 36-inches or below the minimum cover required at any time by any applicable utility standard or safety code.

In further consideration hereof, Grantor covenants and agrees that no permanent buildings or structures will be placed, erected, installed, or permitted upon said easement that will cause any obstructions to prevent the proper maintenance and use of the easement.

All work performed by the Town, its employees, contractors, subcontractors, successors, and assigns in connection with this easement shall be done with care, and the surface of the property shall be restored to its original condition, or as close thereto as possible, except as necessarily modified to accommodate the Improvements installed; and any damages caused on said

easement arising out of the reconstruction, maintenance, and repair of said Improvements in the exercise of the rights hereby provided shall be restored reasonably similar to its original condition following completion of the work performed.

This Easement shall constitute a covenant running with the land for the benefit of the Town and its successors, agents, and assigns, and it shall be binding upon the Town and its successors, agents, assigns, personal representatives, and heirs and devisees.

The Grantor covenants that it is the owner of the Property and that it has the authority to grant this Easement.

This Easement shall be deemed to have been executed in the State of Colorado regardless of the actual location of execution, shall be deemed to be exercised in the State of Colorado, and shall be interpreted in accord with the laws of the State of Colorado.

This writing constitutes the whole agreement between the parties and no prior additional or different oral representation, promise, or agreement regarding the same subject matter shall be binding on any of the parties hereto with respect to the subject matter of this instrument.

This Easement may be executed in separate counterparts, the signatures on which may be by facsimile, none of which need contain the signatures of all Parties, each of which shall be deemed to be an original, and all of which taken together constitute one and the same instrument. It shall not be necessary in making proof of this Easement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto.

Nothing in this Easement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town, or its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., ("CGIA") and any amendments, revisions, or successor statutes thereto.

The obligations of the Town are subject to annual appropriation and shall not be deemed to be multiple fiscal year obligations for the purposes of Article X, Section 20 of the Colorado Constitution.

If any term or condition of this Easement shall be held to be invalid, illegal, or unenforceable, if allowed by law, in lieu of such invalid, illegal, or unenforceable provision, there shall automatically be added as part of this Easement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable. If such reformation is not possible, this Easement shall be construed and enforced without such provision, to the extent that this Easement is then capable of performance within the original intent of the parties.

IN WITNESS WHEREOF, Grantor has executed this Easement this 23rd day of March, 2022

GRANTOR:

Sandra S. Hollett

STATE OF COLORADO)

) ss.

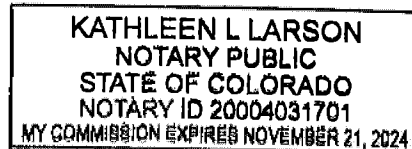
COUNTY OF Weld)

The foregoing Easement was acknowledged before me this 23rd day of March, 2022 by the above.

Witness my hand and official seal.

My commission expires: 11/21/2024

Kathleen L. Larson
Notary Public



TOWN:

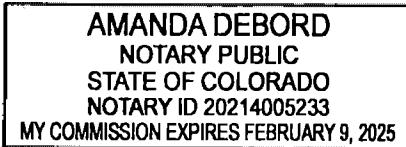
By: [Signature], Town Manager

ATTEST:

By: [Signature], Town ClerkSTATE OF COLORADO)
) ss.
COUNTY OF Weld)

The foregoing Easement was acknowledged before me this 29 day of April, 2022 by Bryan Ostler as Town Manager of the Town of Frederick and by Meghan Martinez as Town Clerk of the Town of Frederick.

Witness my hand and official seal.

My commission expires: 2-9-2025

Amanda DeBord
Notary Public

PROPERTY DESCRIPTION

Utility Easement

A parcel of land for easement purposes being a portion of Lot 2 of the Shrek Minor Subdivision Amendment recorded February 17, 2009 as Reception No. 3605785 of the Records of Weld County and a portion of Lot 1 of the Halleck Subdivision recorded December 21, 1998 as Reception No. 2661726 of the Records of Weld County, and situate within the Southeast Quarter of Section Twenty-five (25), Township Two North (T.2N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), Town of Frederick, County of Weld, State of Colorado, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 25 and assuming the South line of the Southeast Quarter of said Section 25 as bearing North 89°55'47" West a distance of 2625.19 feet with all bearings contained herein relative thereto;

THENCE North 89°55'47" West along the South line of the Southeast Quarter of said Section 25 a distance of 100.00 feet to the West line of said Shrek Minor Subdivision Amendment;

THENCE North 00°31'03" East along said West line a distance of 50.00 feet to a line parallel with and 50.00 feet Northerly of the South line of the Southeast Quarter of said Section 25 and the **POINT OF BEGINNING**;

THENCE North 89°55'47" West along said parallel line a distance of 174.80 feet;

THENCE North 00°04'13" East a distance of 25.00 feet to a line parallel with and 75.00 feet Northerly of the South line of the Southeast Quarter of said Section 25;

THENCE South 89°55'47" East along said North line a distance of 219.79 feet;

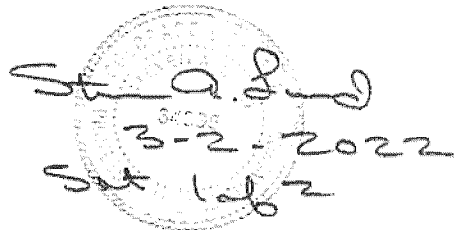
THENCE South 45°15'03" West a distance of 35.47 feet to a line parallel with and 50.00 feet Northerly of the South line of the Southeast Quarter of said Section 25;

THENCE North 89°55'47" West along said parallel line a distance of 19.83 feet to the **POINT OF BEGINNING**;

Said described parcel of land contains a total of 5,180 sq. ft, or 0.12 acre, more or less.

SURVEYOR'S CERTIFICATE

I, Steven A. Lund, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

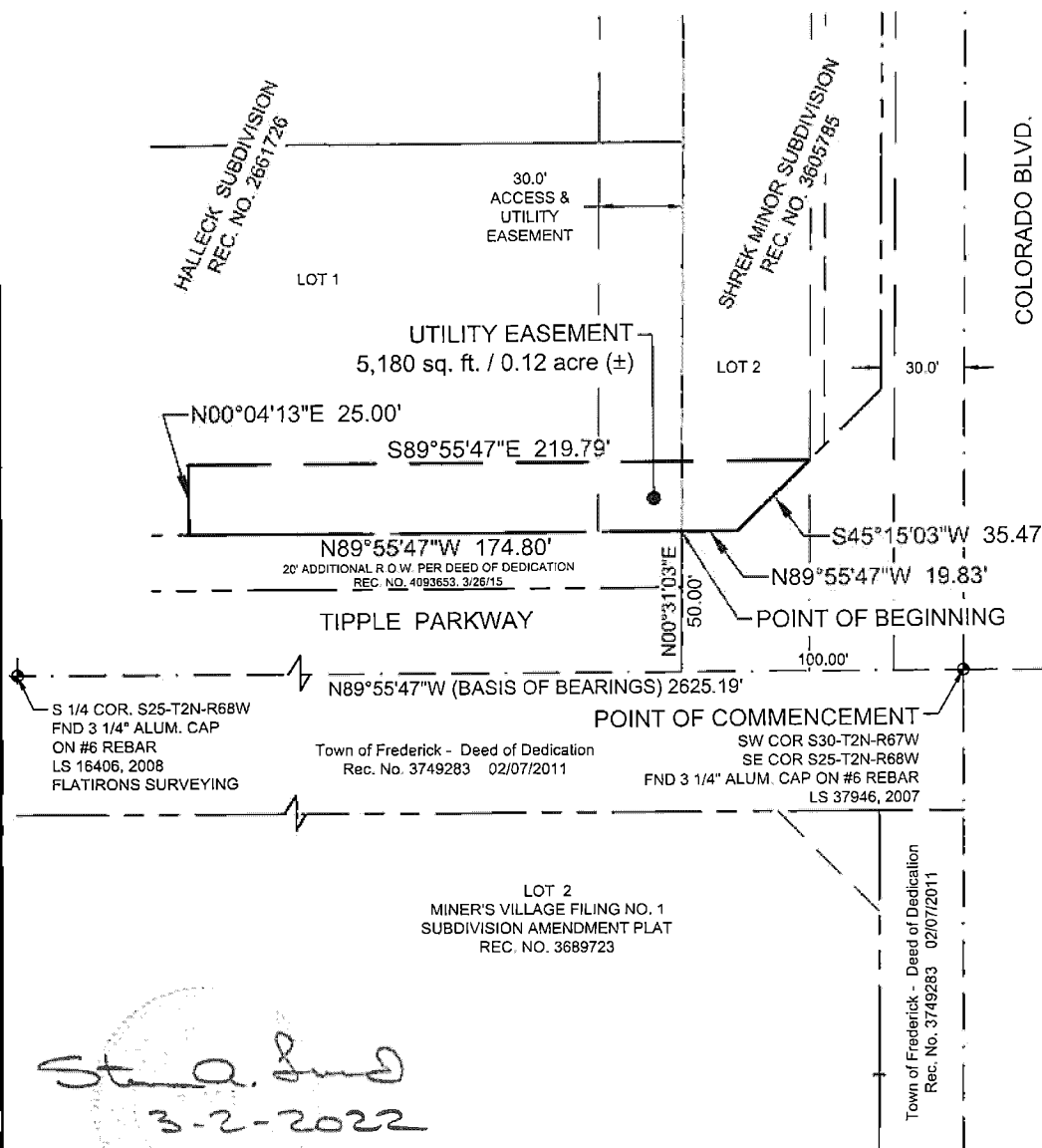


Steven A. Lund – on behalf of Northern Engineering
Colorado Registered Professional
Land Surveyor #34995

NORTHERN ENGINEERING
820 8th Street
Greeley, Colorado 80631
(970) 488-1113

UTILITY EASEMENT EXHIBIT

A PARCEL OF LAND FOR EASEMENT PURPOSES BEING A PORTION OF LOT 2 OF THE SHREK MINOR SUBDIVISION AND SITUATE WITHIN THE SOUTHEAST 1/4 OF SECTION 25, TOWNSHIP 2 NORTH, RANGE 68 WEST OF THE 6th P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO



Steven A. Lund
3-2-2022
Sub 2 of 2

Steven A. Lund
Registered Professional Land Surveyor
Colorado Registration No. 34995
For and on behalf of Northern Engineering Services, Inc.



50 0 50 Feet
(IN U.S. SURVEY FEET)
1 inch = 50 ft.

NOTE: THIS EXHIBIT IS NOT INTENDED TO BE A MONUMENTED LAND SURVEY. ITS SOLE PURPOSE IS AS A GRAPHIC REPRESENTATION TO AID IN THE VISUALIZATION OF THE WRITTEN PROPERTY DESCRIPTION WHICH IT ACCOMPANIES. THE WRITTEN PROPERTY DESCRIPTION SUPERCEDES THE EXHIBIT DRAWING.



**NORTHERN
ENGINEERING**

FORT COLLINS: 301 North Home Street, Suite 100, 80526-9702, 970.221.4156
GREELEY: 820 8th Street, 80631
www.northernengineering.com

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 22-R-30**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, ACCEPTING
AND RATIFYING A GRANT OF UTILITY EASEMENT FROM SANDRA S.
HALLECK**

WHEREAS, the Sandra S. Halleck (“Grantor”), is the owner of certain real properties described as:

LOT 1 OF THE HALLECK SUBDIVISION

AND

LOT 2 OF THE SHREK MINOR SUBDIVISION AMENDMENT

WHEREAS, Grantor desires to grant, and the Town of Frederick desires to accept and ratify, a utility easement (attached hereto) over a portion of Grantor’s properties described above; and,

WHEREAS, the timeline for construction of intersection improvements required this easement to be executed immediately by the Town Manager before work could begin to relocate raw water facilities owned by the Town of Frederick before watering season.

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

Section 1. Acceptance and Ratification of a Perpetual Utility Easement.

- a. The Board of Trustees approves the Easement; generally located within a portion of Lot 1 of the Halleck Subdivision and Lot 2 of the Shrek Minor Subdivision Amendment more particularly described in Exhibit A.
- b. The Board of Trustees ratifies the execution of the easement signed on behalf of the Town of Frederick by the Town Manager.

Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED AND ADOPTED THIS 12TH DAY OF APRIL,
2022.**

ATTEST:

TOWN OF FREDERICK

By _____
Meghan Martinez, MMC, Town Clerk

By _____
Tracie Crites, Mayor

EXHIBIT A
Utility Easement Agreement
Recorded at 4814081 in the Weld County Records



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Rusty ONeal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

1 Colorado-Big Thompson Unit Purchase Consideration

Agenda Date: Town Board Meeting – April 12, 2022

Attachments:

- a. Resolution 22-R-31
- b. Purchase and Sale Agreement

Finance Review:

Administrative Services

Submitted by:

Sarah Watson

Civil Engineer 1

Approved for Presentation:



Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

Strategic Plan Alignment:

Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal.

- Water acquisition to start in early 2022

Summary Statement:

The Town has an opportunity to purchase 1 units of C-BT water.

Detail of Issue/Request:

In accordance with the recently adopted 10-Year Water Supply Plan staff has been in contact with a water broker, Arnold Turner, about the purchase of 1 units of Colorado-Big Thompson water. The Plan recommends purchasing C-BT water when it is available to the Town as the cost of C-BT units are projected to continue to increase. The recently adopted 2022 Budget included funds for the purchase of at least 200 units of C-BT water. These 200 units are intended to be used for economic incentives which

Built on What Matters.

will work towards the Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal.

The units are being offered at \$70,000 per unit for a total of \$70,000.

Legal Comments:

The Town is required to supply water to properties and customers that the Town has commitments to serve.

Alternatives/Options:

The Town may decide not to enter into a contract for the water at this time.

Financial Considerations:

The Town has budgeted funds for the purchase of 200 C-BT unit and has adequate funds to purchase the 1 units proposed at this time.

Staff Recommendation:

Staff recommends the approval of resolution 22-R-31 for the purchase of 1 unit of C-BT from Danna Marie Ortiz.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 22-R-31**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
AUTHORIZING THE PURCHASE OF 1 UNITS OF C-BT WATER FROM
DANNA MARIE ORTIZ**

WHEREAS, C.R.S. § 31-35-101 authorizes the purchase by a municipality of rights and interests in water, waterways, and water franchises in order to supply the municipality and its residents with water; and; and

WHEREAS, the Board of Trustees of the Town of Frederick has received one offer for the sale of 1 units of C-BT water; and

WHEREAS, the water fund contains sufficient appropriated funds to make the payment and the expenditures would be deemed an eligible expenditure; and

WHEREAS, the Board of Trustees has determined it is in the best interests of the residents of the Town to secure water rights for municipal purposes; and

WHEREAS, the Board of Trustees authorizes the Town Manager to execute the contracts for the purchase of those respective units; and

WHEREAS, in the 2022 Budget, the Town Board of Trustees authorized the appropriation and expenditures of funds from the water fund; and

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF
THE TOWN OF FREDERICK, WELD COUNTY, COLORADO THAT;**

Section 1. The following contracts for the purchase of CBT water rights are hereby ratified and approved:

a. Danna Marie Ortiz; 1 units of CBT water at \$70,000 per unit for a total of \$70,000.

Section 2. The 2022 Budget for the Town of Frederick included funds for C-BT unit purchases.

Section 3. **Effective Date.** This resolution shall be become effective immediately upon adoption.

Section 5. **Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 3. **Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 12TH DAY OF APRIL, 2022.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, CMC, Town Clerk

By _____
Tracie Crites, Mayor

**AGREEMENT FOR SALE AND PURCHASE OF UNITS OF
COLORADO-BIG THOMPSON PROJECT**

This Agreement for Sale and Purchase of Units of Colorado-Big Thompson Project (“Agreement”) is made and entered into this 12th day of April, 2022 by and between Danna Marie Ortiz (“Seller”), and the Town of Frederick, a Colorado municipal corporation (“Town”) (each a “Party” and together the “Parties”).

Recitals

- A. The Colorado-Big Thompson Project (“C-BT”) is administered by the Northern Colorado Water Conservancy District (“NCWCD”).
- B. Seller is the record owner of **1** C-BT unit, with such ownership shown on the books of NCWCD (“Seller’s C-BT Units”). These units are assigned as follows:

Lot A-6, Brand Family Subdivision Exemption Plat as recorded in Rec.
#2857908, Section 7, Township 3 North, Range 69 West.
- C. NCWCD allocates water to Seller’s C-BT Units under a Class **D** Allotment Contract.
- D. Seller wishes to sell, convey, and assign to the Town, and the Town wishes to acquire, Seller’s C-BT Units on the terms and conditions given in this Agreement.

For and in consideration of the mutual promises, covenants, and conditions in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and the Town agree as follows:

- 1. **Purchase Price.** The purchase price for Seller’s C-BT Units is **\$70,000** per unit, for a total of **\$70,000** (“Purchase Price”).
 - 1.1 The Parties agree that Stewart Title Company, 12110 N. Pecos St., Suite 150, Westminster, CO, 80234, will act as the escrow agent for this transaction (“Escrow Agent”), according to the Escrow Agreement and Instructions attached as **Exhibit A**.
 - 1.2 No earnest money is required for this transaction.
 - 1.3 If all pre-conditions to closing have been met, then on or before the Closing Date, as the term “Closing Date” is defined in paragraph 8 below, the Town shall deposit the Purchase Price with the Escrow Agent, in immediately available certified funds or cash.

- 1.4 If all pre-conditions to closing have been met, then on or before the Closing Date, the Town also shall deposit with the Escrow Agent the estimated NCWCD Fee and Assessment Credit, as that term is defined in paragraph 4 below, in certified Funds or cash.
 - 1.5 Turner Realty will receive from the Seller a commission of 2% of the total Purchase Price, to be paid from proceeds at closing.
 - 1.6 The Purchase Price, estimated NCWCD Fee and Assessment Credit, and estimated Town's Broker's Fee deposited with the Escrow Agent are the "Escrowed Funds."
 - 1.7 Seller shall pay all escrow and closing fees invoiced by the Escrow Agent, with such fees to be debited to Seller in the closing statement and paid to the Escrow Agent out of the Escrowed Funds.
 - 1.8 Any fee or commission due to a broker engaged by the Seller ("Seller Broker's Fee") will be debited to Seller in the closing statement and paid out of the Escrowed Funds.
 - 1.9 The Town Broker's Fee, if any, will be debited to Town in the closing statement and paid out of the Escrowed Funds.
2. Pre-conditions to closing. The Town's obligation to pay the Purchase Price and close on the transaction is expressly conditioned on each of the following:
- 2.1 Seller must have delivered to Town, at Seller's sole expense and within seven days of the date of this Agreement, copies of all documents in Seller's possession pertaining to Seller's unencumbered title to and right to transfer to the Town Seller's C-BT Units, including without limitation any property records documenting the separation of Seller's C-BT Units from specified real property and any records documenting the termination or release of any liens or encumbrances on or security interests in Seller's C-BT Units.
 - 2.2 If Seller's C-BT Units are used for irrigation of land or are tied to designated land in the records of NCWCD, Seller must have delivered to the Town, no earlier than 21 days and no later than 7 days before the Closing Date, a satisfactory ownership and encumbrance report for all such land ("O&E Report").
 - 2.3 As documented by the O&E Report, the records of NCWCD, and other records pertaining to ownership of Seller's C-BT Units, title to Seller's C-BT Units must be good and merchantable in Seller as of the Closing Date, with such title free and clear of all liens, encumbrances, assessments, and security interests. The Town

shall decide, in the reasonable exercise of its sole discretion, whether and when Seller has documented good and merchantable title to Seller's C-BT Units.

- 2.4 Seller must have completed all requirements of NCWCD for transfer of Seller's C-BT Units to the Town, and the NCWCD Board must have formally approved the transfer in writing.
- 2.5 Seller must have paid, directly to NCWCD, the transfer fee imposed by NCWCD for transfer of Seller's C-BT Units to the Town.
- 2.6 The Town's Board of Trustees must have approved the Town's acquisition of Seller's C-BT Units, including by virtue of directing the Mayor or Town administrators or staff to complete the acquisition.

3. Seller's warranties.

- 3.1 Seller warrants that it has, or that by the Closing Date it will have, good and marketable title to Seller's C-BT Units, along with the right and privilege to sell the same.
- 3.2 Seller warrants that there are, or that by the Closing Date there will be, no outstanding liens, mortgages, or other encumbrances on title to Seller's C-BT Units.
- 3.3 Seller warrants that no NCWCD fees or assessments are, or that by the Closing Date no NCWCD fees or assessments will be, outstanding or due and owing on Seller's C-BT Units.
- 3.4 Seller warrants that no other person or entity holds preemptive rights to purchase or lease Seller's C-BT Units.
- 3.5 Seller warrants that it has not entered into any agreement with a third party with respect to Seller's C-BT Units that may result in liability or expense to the Town based on the Town's acquisition of all or any portion of Seller's C-BT Units.
- 3.6 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any litigation, claim, or proceeding of any type, pending or threatened, that in any matter affects or pertains to Seller's C-BT Units.
- 3.7 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any existing violation of any federal, state, or local law, code, ordinance, rule, regulation, or requirement pertaining to Seller's C-BT Units.

4. NCWCD assessments. On the Closing Date, the NCWCD fees and assessments documented to have been paid on Seller's C-BT Units for the then-current water year will be pro-rated between the portion of the water year ending on the Closing Date and the portion of the water year remaining as of that date. The NCWCD fees and assessments for the portion of the water year remaining on the Closing Date ("NCWCD Fee and Assessment Credit") will be credited to Seller in the closing statement and paid to Seller out of the Escrowed Funds.
5. Use of water allocated to Seller's C-BT Units. Beginning on the day after the Closing Date, the Town will have sole use of water allocated by NCWCD to Seller's C-BT Units. Before and through the Closing Date, Seller will retain sole use of such water unless Seller and the Town enter into a separate agreement for the Town's temporary use of the water allocated to Seller's C-BT Units.
6. NCWCD requirements.
 - 6.1 The Parties shall promptly execute and deliver to NCWCD all required applications and other documentation required by NCWCD for transfer of Seller's C-BT Units to the Town, including without limitation an Application for a Temporary Use Permit, an Affidavit Regarding Base Water Supply, a completed Application for Change of Class D Allotment Contract, and any other documents required by NCWCD. The Parties shall work cooperatively to meet all deadlines for submittal of such materials for the NCWCD Board's consideration and approval at its next regular meeting.
 - 6.2 Seller shall pay, directly to NCWCD, the transfer fee of \$500 imposed by NCWCD for transfer of Seller's C-BT Units to the Town.
7. Section 1031 exchange. Seller may elect to structure this transaction as an exchange under Section 1031 of the Internal Revenue Code ("1031 Exchange"). In such event, Seller shall give written notice to the Town as provided in paragraph 9 below. The Parties shall confer to determine if a reasonable extension of the Closing Date is necessary for Seller to complete the 1031 Exchange. Any expenses related to a 1031 Exchange will be Seller's sole responsibility, but the Town will cooperate with the Seller in implementing the 1031 Exchange.
8. Closing. The Parties will consummate the transaction at a closing to take place electronically within 5 business days of the date on which all pre-conditions to closing, as described in paragraph 2 above, have been successfully completed.
 - 8.1 Closing Date. The actual date of the closing, which is expected take place on or before June 30, 2022, is the "Closing Date." This date may be extended by mutual

agreement of the parties as may be necessary to meet NCWCD schedule requirements.

- 8.2 Performance of closing. On the Closing Date, the Escrow Agent shall perform as described in the Escrow Agreement and Instructions attached as **Exhibit A**, including without limitation by distributing the total amount due to seller (Purchase Price + final NCWCD Fee and Assessment Credit – escrow and closing fees – any Seller Broker’s Fee) by wire transfer or in other immediately available funds; by distributing payment of the broker commission described in paragraph 1.5 above directly to Turner Realty by check or wire transfer; and by delivering to the Parties, by FedEx, UPS, or other delivery service with tracking, any final instruments or other documents memorializing the transaction, including without limitation the Bill of Sale and Assignment described in paragraph 8.3 below and Seller’s Certification of Warranties described in paragraph 8.4 below.
- 8.3 Bill of Sale and Assignment. No later than seven days before the Closing Date, Seller shall deliver to the Escrow Agent a good and sufficient Bill of Sale and Assignment acceptable to the Town and substantially in the form of attached **Exhibit B**. Seller shall execute the Bill of Sale and Assignment, but leave it undated; the Escrow Agent shall handwrite in the date on the Closing Date.
- 8.4 Seller’s Certification of Warranties. No earlier than seven days and no later than one day before the Closing Date, Seller shall deliver to the Escrow Agent a written certification that Seller’s warranties given in paragraph 3 above remain true and correct as of the Closing Date. In the event that Seller is unable to certify that one or more of the warranties remains true and correct as of the Closing Date, the Town may, at its sole option, proceed to closing notwithstanding such defects or, upon written notice to Seller, declare this Agreement terminated. In the event of such termination, the Parties will have no further rights or obligations hereunder.
9. Notices. All notices or other documents required to be sent to either Party under this Agreement must be in writing. Such notices or documents will be deemed effective upon receipt following delivery by certified mail, return receipt requested; email; personal delivery; or delivery by FedEx, UPS, or another delivery service with tracking. Notices or documents must be addressed and delivered as follows:

TO SELLER:

Danna Marie Ortiz
728 Cheyenne Dr.
Fort Collins, CO 80525
Email: dannaortiz854@gmail.com

TO TOWN:

Town of Frederick
Attn: Kevin Ash, Engineering Director
P.O. Box 435
401 Locust Street
Frederick, CO 80530
E-mail: kash@frederickco.gov

With copies by email only to the following:

Sarah Watson, Civil Engineer, Town of Frederick
swatson@frederickco.gov

Jason Meyers, Town Attorney
jmeyers@frederickco.gov

Jennifer DiLalla, Special Water Counsel
jdilalla@mwhw.com

TO ESCROW AGENT:

Stewart Title Company
Gina Cruz
12110 North Pecos St , Suite 150
Westminster, CO, 80234
Email: Gina.Cruz@stewart.com

The addresses above may be changed by written notice given in the manner provided above.

10. Default and remedies. In the event of default, the non-defaulting Party shall notify the defaulting Party in writing of such default, documenting the nature thereof. If such default is not cured within fourteen days, the non-defaulting Party will be entitled to all remedies available at law and in equity, including without limitation the remedy of specific performance and the remedy of damages.
11. Successors and assigns. This Agreement benefits and burdens the Parties and their respective successors and assigns; provided, however, that neither Party may assign its rights or obligations hereunder except with the prior written consent of the other Party.
12. Amendment or modification. This Agreement may be modified only by a signed writing executed by the Parties with the same formality as was this Agreement.
13. Time of the essence. Time is of the essence under this Agreement.

14. Attorney fees and other litigation costs. If either party initiates a court proceeding to enforce any provision of this Agreement, including without limitation an action for specific performance or for damages, the non-prevailing Party shall pay the prevailing Party's costs and fees for the proceeding, including reasonable attorney fees and reasonable expert witness fees.
15. Venue. The sole venue for any action to enforce this Agreement will be the District Court for Weld County, Colorado.
16. No continuing waiver of default. A party's waiver of any instance of default under this Agreement will not constitute a continuing waiver of any subsequent default concerning either the same or any other provision hereof.
17. No waiver of governmental immunity. Nothing in this Agreement constitutes or is to be deemed or construed as constituting a waiver of any privilege or immunity available to the Town under the statutes and constitution of the State of Colorado, including the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -119, as it may be amended.
18. Headings for convenience only. Paragraph headings and titles in this Agreement are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any term of this Agreement.
19. Non-severability. Each paragraph and sub-paragraph of this Agreement is intertwined with the others and is not severable unless by mutual written consent of the Parties.
20. Entire agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and any prior oral or written agreements pertaining to that subject matter have been merged or integrated into this Agreement.
21. Authority to execute Agreement. Each Party represents and warrants that the individual(s) executing this Agreement on that Party's behalf is authorized to do so and to bind such Party to the Agreement's terms. Each Party further represents and warrants that it is legally entitled to enter into this Agreement and to consummate the transaction described herein.
22. Execution in counterparts and electronic scans. This Agreement may be executed in counterparts, and all such executed counterparts together will constitute the Agreement. A legible electronic scan of the original Agreement and signatures in PDF format will be deemed an original, and such electronic scans will be binding for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement in counterparts on the date first written above.

SELLER: DANNA MARIE ORTIZ

STATE OF COLORADO)

ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of March 2022,
by Danna Marie Ortiz.

Witness my hand and official seal.

My commission expires _____.

Notary Public

Signatures continue on next page.



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Rusty ONeal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

6 Colorado-Big Thompson Unit Purchase Consideration

Agenda Date: Town Board Meeting – April 12, 2022

Attachments:

- a. Resolution 22-R-32
- b. Purchase and Sale Agreement

Finance Review:

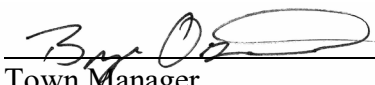
Administrative Services

Submitted by:

Sarah Watson

Civil Engineer 1

Approved for Presentation:



Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

Strategic Plan Alignment:

Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal.

- Water acquisition to start in early 2022

Summary Statement:

The Town has an opportunity to purchase 6 units of C-BT water.

Detail of Issue/Request:

In accordance with the recently adopted 10-Year Water Supply Plan staff has been in contact with a water broker, Arnold Turner, about the purchase of 6 units of Colorado-Big Thompson water. The Plan recommends purchasing C-BT water when it is available to the Town as the cost of C-BT units are projected to continue to increase. The recently adopted 2022 Budget included funds for the purchase of at least 200 units of C-BT water. These 200 units are intended to be used for economic incentives which

Built on What Matters.

will work towards the Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal.

The units are being offered at \$70,000 per unit for a total of \$420,000.

Legal Comments:

The Town is required to supply water to properties and customers that the Town has commitments to serve.

Alternatives/Options:

The Town may decide not to enter into a contract for the water at this time.

Financial Considerations:

The Town has budgeted funds for the purchase of 200 C-BT unit and has adequate funds to purchase the 6 units proposed at this time.

Staff Recommendation:

Staff recommends the approval of resolution 22-R-32 for the purchase of 6 units from Hank and Betty, Inc.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 22-R-32**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
AUTHORIZING THE PURCHASE OF 6 UNITS OF C-BT WATER FROM
HANK AND BETTY, INC.**

WHEREAS, C.R.S. § 31-35-101 authorizes the purchase by a municipality of rights and interests in water, waterways, and water franchises in order to supply the municipality and its residents with water; and; and

WHEREAS, the Board of Trustees of the Town of Frederick has received one offer for the sale of 6 units of C-BT water; and

WHEREAS, the water fund contains sufficient appropriated funds to make the payment and the expenditures would be deemed an eligible expenditure; and

WHEREAS, the Board of Trustees has determined it is in the best interests of the residents of the Town to secure water rights for municipal purposes; and

WHEREAS, the Board of Trustees authorizes the Town Manager to execute the contracts for the purchase of those respective units; and

WHEREAS, in the 2022 Budget, the Town Board of Trustees authorized the appropriation and expenditures of funds from the water fund; and

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF
THE TOWN OF FREDERICK, WELD COUNTY, COLORADO THAT;**

Section 1. The following contracts for the purchase of CBT water rights are hereby ratified and approved:

a. Hank and Betty, Inc.; 6 units of CBT water at \$70,000 per unit for a total of \$420,000.

Section 2. The 2022 Budget for the Town of Frederick included funds for C-BT unit purchases.

Section 3. **Effective Date.** This resolution shall become effective immediately upon adoption.

Section 5. **Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 3. **Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 12TH DAY OF APRIL, 2022.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, MMC, Town Clerk

By _____
Tracie Crites, Mayor

**AGREEMENT FOR SALE AND PURCHASE OF UNITS OF
COLORADO-BIG THOMPSON PROJECT**

This Agreement for Sale and Purchase of Units of Colorado-Big Thompson Project (“Agreement”) is made and entered into this 12th day of April, 2022, by and between Hank and Betty, Inc., Carole Newman, President (“Seller”), and the Town of Frederick, a Colorado municipal corporation (“Town”) (each a “Party” and together the “Parties”).

Recitals

- A. The Colorado-Big Thompson Project (“C-BT”) is administered by the Northern Colorado Water Conservancy District (“NCWCD”).
- B. Seller is the record owner of **6** C-BT units, with such ownership shown on the books of NCWCD (“Seller’s C-BT Units”).
- C. NCWCD allocates water to Seller’s C-BT Units under a Class **D** Allotment Contract.
- D. Seller wishes to sell, convey, and assign to the Town, and the Town wishes to acquire, Seller’s C-BT Units on the terms and conditions given in this Agreement.

For and in consideration of the mutual promises, covenants, and conditions in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and the Town agree as follows:

- 1. **Purchase Price.** The purchase price for Seller’s C-BT Units is **\$70,000** per unit, for a total of **\$420,000** (“Purchase Price”).
 - 1.1 The Parties agree that Stewart Title Company, 12110 N. Pecos St., Suite 150, Westminster, CO, 80234, will act as the escrow agent for this transaction (“Escrow Agent”), according to the Escrow Agreement and Instructions attached as **Exhibit A**.
 - 1.2 No earnest money is required for this transaction.
 - 1.3 If all pre-conditions to closing have been met, then on or before the Closing Date, as the term “Closing Date” is defined in paragraph 8 below, the Town shall deposit the Purchase Price with the Escrow Agent, in immediately available certified funds or cash.
 - 1.4 If all pre-conditions to closing have been met, then on or before the Closing Date, the Town also shall deposit with the Escrow Agent the estimated NCWCD Fee and Assessment Credit, as that term is defined in paragraph 4 below, in certified Funds or cash.

- 1.5 Turner Realty will receive from the Seller a commission of 3% of the total Purchase Price, to be paid from proceeds at closing.
 - 1.6 The Purchase Price, estimated NCWCD Fee and Assessment Credit, and estimated Town's Broker's Fee deposited with the Escrow Agent are the "Escrowed Funds."
 - 1.7 Seller shall pay all escrow and closing fees invoiced by the Escrow Agent, with such fees to be debited to Seller in the closing statement and paid to the Escrow Agent out of the Escrowed Funds.
 - 1.8 Any fee or commission due to a broker engaged by the Seller ("Seller Broker's Fee") will be debited to Seller in the closing statement and paid out of the Escrowed Funds.
 - 1.9 The Town Broker's Fee, if any, will be debited to Town in the closing statement and paid out of the Escrowed Funds.
2. Pre-conditions to closing. The Town's obligation to pay the Purchase Price and close on the transaction is expressly conditioned on each of the following:
- 2.1 Seller must have delivered to Town, at Seller's sole expense and within seven days of the date of this Agreement, copies of all documents in Seller's possession pertaining to Seller's unencumbered title to and right to transfer to the Town Seller's C-BT Units, including without limitation any property records documenting the separation of Seller's C-BT Units from specified real property and any records documenting the termination or release of any liens or encumbrances on or security interests in Seller's C-BT Units.
 - 2.2 If Seller's C-BT Units are used for irrigation of land or are tied to designated land in the records of NCWCD, Seller must have delivered to the Town, no earlier than 21 days and no later than 7 days before the Closing Date, a satisfactory ownership and encumbrance report for all such land ("O&E Report").
 - 2.3 As documented by the O&E Report, the records of NCWCD, and other records pertaining to ownership of Seller's C-BT Units, title to Seller's C-BT Units must be good and merchantable in Seller as of the Closing Date, with such title free and clear of all liens, encumbrances, assessments, and security interests. The Town shall decide, in the reasonable exercise of its sole discretion, whether and when Seller has documented good and merchantable title to Seller's C-BT Units.

- 2.4 Seller must have completed all requirements of NCWCD for transfer of Seller's C-BT Units to the Town, and the NCWCD Board must have formally approved the transfer in writing.
 - 2.5 Seller must have paid, directly to NCWCD, the transfer fee imposed by NCWCD for transfer of Seller's C-BT Units to the Town.
 - 2.6 The Town's Board of Trustees must have approved the Town's acquisition of Seller's C-BT Units, including by virtue of directing the Mayor or Town administrators or staff to complete the acquisition.
3. Seller's warranties.
- 3.1 Seller warrants that it has, or that by the Closing Date it will have, good and marketable title to Seller's C-BT Units, along with the right and privilege to sell the same.
 - 3.2 Seller warrants that there are, or that by the Closing Date there will be, no outstanding liens, mortgages, or other encumbrances on title to Seller's C-BT Units.
 - 3.3 Seller warrants that no NCWCD fees or assessments are, or that by the Closing Date no NCWCD fees or assessments will be, outstanding or due and owing on Seller's C-BT Units.
 - 3.4 Seller warrants that no other person or entity holds preemptive rights to purchase or lease Seller's C-BT Units.
 - 3.5 Seller warrants that it has not entered into any agreement with a third party with respect to Seller's C-BT Units that may result in liability or expense to the Town based on the Town's acquisition of all or any portion of Seller's C-BT Units.
 - 3.6 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any litigation, claim, or proceeding of any type, pending or threatened, that in any matter affects or pertains to Seller's C-BT Units.
 - 3.7 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any existing violation of any federal, state, or local law, code, ordinance, rule, regulation, or requirement pertaining to Seller's C-BT Units.
4. NCWCD assessments. On the Closing Date, the NCWCD fees and assessments documented to have been paid on Seller's C-BT Units for the then-current water year will be pro-rated between the portion of the water year ending on the Closing Date and the portion of the water year remaining as of that date. The NCWCD fees and assessments for

the portion of the water year remaining on the Closing Date (“NCWCD Fee and Assessment Credit”) will be credited to Seller in the closing statement and paid to Seller out of the Escrowed Funds.

5. Use of water allocated to Seller’s C-BT Units. Beginning on the day after the Closing Date, the Town will have sole use of water allocated by NCWCD to Seller’s C-BT Units. Before and through the Closing Date, Seller will retain sole use of such water unless Seller and the Town enter into a separate agreement for the Town’s temporary use of the water allocated to Seller’s C-BT Units.
6. NCWCD requirements.
 - 6.1 The Parties shall promptly execute and deliver to NCWCD all required applications and other documentation required by NCWCD for transfer of Seller’s C-BT Units to the Town, including without limitation an Application for a Temporary Use Permit, an Affidavit Regarding Base Water Supply, a completed Application for Change of Class D Allotment Contract, and any other documents required by NCWCD. The Parties shall work cooperatively to meet all deadlines for submittal of such materials for the NCWCD Board’s consideration and approval at its next regular meeting.
 - 6.2 Seller shall pay, directly to NCWCD, the transfer fee of \$500 imposed by NCWCD for transfer of Seller’s C-BT Units to the Town.
7. Section 1031 exchange. Seller may elect to structure this transaction as an exchange under Section 1031 of the Internal Revenue Code (“1031 Exchange”). In such event, Seller shall give written notice to the Town as provided in paragraph 9 below. The Parties shall confer to determine if a reasonable extension of the Closing Date is necessary for Seller to complete the 1031 Exchange. Any expenses related to a 1031 Exchange will be Seller’s sole responsibility, but the Town will cooperate with the Seller in implementing the 1031 Exchange.
8. Closing. The Parties will consummate the transaction at a closing to take place electronically within 5 business days of the date on which all pre-conditions to closing, as described in paragraph 2 above, have been successfully completed.
 - 8.1 Closing Date. The actual date of the closing, which is expected take place on or before June 30, 2022, is the “Closing Date.” This date may be extended by mutual agreement of the parties as may be necessary to meet NCWCD schedule requirements.
 - 8.2 Performance of closing. On the Closing Date, the Escrow Agent shall perform as described in the Escrow Agreement and Instructions attached as **Exhibit A**,

including without limitation by distributing the total amount due to seller (Purchase Price + final NCWCD Fee and Assessment Credit – escrow and closing fees – any Seller Broker’s Fee) by wire transfer or in other immediately available funds; by distributing payment of the broker commission described in paragraph 1.5 above directly to Turner Realty by check or wire transfer; and by delivering to the Parties, by FedEx, UPS, or other delivery service with tracking, any final instruments or other documents memorializing the transaction, including without limitation the Bill of Sale and Assignment described in paragraph 8.3 below and Seller’s Certification of Warranties described in paragraph 8.4 below.

8.3 Bill of Sale and Assignment. No later than seven days before the Closing Date, Seller shall deliver to the Escrow Agent a good and sufficient Bill of Sale and Assignment acceptable to the Town and substantially in the form of attached **Exhibit B**. Seller shall execute the Bill of Sale and Assignment, but leave it undated; the Escrow Agent shall handwrite in the date on the Closing Date.

8.4 Seller’s Certification of Warranties. No earlier than seven days and no later than one day before the Closing Date, Seller shall deliver to the Escrow Agent a written certification that Seller’s warranties given in paragraph 3 above remain true and correct as of the Closing Date. In the event that Seller is unable to certify that one or more of the warranties remains true and correct as of the Closing Date, the Town may, at its sole option, proceed to closing notwithstanding such defects or, upon written notice to Seller, declare this Agreement terminated. In the event of such termination, the Parties will have no further rights or obligations hereunder.

9. Notices. All notices or other documents required to be sent to either Party under this Agreement must be in writing. Such notices or documents will be deemed effective upon receipt following delivery by certified mail, return receipt requested; email; personal delivery; or delivery by FedEx, UPS, or another delivery service with tracking. Notices or documents must be addressed and delivered as follows:

TO SELLER:

Carole Newman, President
Hank and Betty, Inc.
PO Box 263
Three Forks, MT 59752
303-922-5095

TO TOWN:

Town of Frederick
Attn: Kevin Ash, Engineering Director
P.O. Box 435
401 Locust Street
Frederick, CO 80530
E-mail: kash@frederickco.gov

With copies by email only to the following:

Sarah Watson, Civil Engineer, Town of Frederick
swatson@frederickco.gov

Jason Meyers, Town Attorney
jmeyers@frederickco.gov

Jennifer DiLalla, Special Water Counsel
jdilalla@mwhw.com

TO ESCROW AGENT:

Stewart Title Company
Gina Cruz
12110 North Pecos St , Suite 150
Westminster, CO, 80234
Email: Gina.Cruz@stewart.com

The addresses above may be changed by written notice given in the manner provided above.

10. Default and remedies. In the event of default, the non-defaulting Party shall notify the defaulting Party in writing of such default, documenting the nature thereof. If such default is not cured within fourteen days, the non-defaulting Party will be entitled to all remedies available at law and in equity, including without limitation the remedy of specific performance and the remedy of damages.
11. Successors and assigns. This Agreement benefits and burdens the Parties and their respective successors and assigns; provided, however, that neither Party may assign its rights or obligations hereunder except with the prior written consent of the other Party.
12. Amendment or modification. This Agreement may be modified only by a signed writing executed by the Parties with the same formality as was this Agreement.
13. Time of the essence. Time is of the essence under this Agreement.

14. Attorney fees and other litigation costs. If either party initiates a court proceeding to enforce any provision of this Agreement, including without limitation an action for specific performance or for damages, the non-prevailing Party shall pay the prevailing Party's costs and fees for the proceeding, including reasonable attorney fees and reasonable expert witness fees.
15. Venue. The sole venue for any action to enforce this Agreement will be the District Court for Weld County, Colorado.
16. No continuing waiver of default. A party's waiver of any instance of default under this Agreement will not constitute a continuing waiver of any subsequent default concerning either the same or any other provision hereof.
17. No waiver of governmental immunity. Nothing in this Agreement constitutes or is to be deemed or construed as constituting a waiver of any privilege or immunity available to the Town under the statutes and constitution of the State of Colorado, including the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -119, as it may be amended.
18. Headings for convenience only. Paragraph headings and titles in this Agreement are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any term of this Agreement.
19. Non-severability. Each paragraph and sub-paragraph of this Agreement is intertwined with the others and is not severable unless by mutual written consent of the Parties.
20. Entire agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and any prior oral or written agreements pertaining to that subject matter have been merged or integrated into this Agreement.
21. Authority to execute Agreement. Each Party represents and warrants that the individual(s) executing this Agreement on that Party's behalf is authorized to do so and to bind such Party to the Agreement's terms. Each Party further represents and warrants that it is legally entitled to enter into this Agreement and to consummate the transaction described herein.
22. Execution in counterparts and electronic scans. This Agreement may be executed in counterparts, and all such executed counterparts together will constitute the Agreement. A legible electronic scan of the original Agreement and signatures in PDF format will be deemed an original, and such electronic scans will be binding for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement in counterparts on the date first written above.

SELLER: HANK AND BETTY, INC.

By: _____
Carole Newman, President

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Carole Newman, President of Hank and Betty, Inc.

Witness my hand and official seal.

My commission expires _____.

Notary Public

Signatures continue on next page.



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Rusty ONeal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

7 Colorado-Big Thompson Unit Purchase Consideration

Agenda Date: Town Board Meeting – April 12, 2022

Attachments:

- a. Resolution 22-R-33
- b. Purchase and Sale Agreement

Finance Review:

Administrative Services

Submitted by:

Sarah Watson

Civil Engineer 1

Approved for Presentation:



Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

Strategic Plan Alignment:

Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal.

- Water acquisition to start in early 2022

Summary Statement:

The Town has an opportunity to purchase 7 units of C-BT water.

Detail of Issue/Request:

In accordance with the recently adopted 10-Year Water Supply Plan staff has been in contact with a water broker, Arnold Turner, about the purchase of 7 units of Colorado-Big Thompson water. The Plan recommends purchasing C-BT water when it is available to the Town as the cost of C-BT units are projected to continue to increase. The recently adopted 2022 Budget included funds for the purchase of at least 200 units of C-BT water. These 200 units are intended to be used for economic incentives which

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will work towards the Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal.

The units are being offered at \$70,000 per unit for a total of \$490,000.

Legal Comments:

The Town is required to supply water to properties and customers that the Town has commitments to serve.

Alternatives/Options:

The Town may decide not to enter into a contract for the water at this time.

Financial Considerations:

The Town has budgeted funds for the purchase of 200 C-BT unit and has adequate funds to purchase the 7 units proposed at this time.

Staff Recommendation:

Staff recommends the approval of resolution 22-R-33 for the purchase of 7 units from Zabka Farms, LLC

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 22-R-33**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
AUTHORIZING THE PURCHASE OF 7 UNITS OF C-BT WATER FROM
ZABKA FARMS, LLC**

WHEREAS, C.R.S. § 31-35-101 authorizes the purchase by a municipality of rights and interests in water, waterways, and water franchises in order to supply the municipality and its residents with water; and; and

WHEREAS, the Board of Trustees of the Town of Frederick has received one offer for the sale of 7 units of C-BT water; and

WHEREAS, the water fund contains sufficient appropriated funds to make the payment and the expenditures would be deemed an eligible expenditure; and

WHEREAS, the Board of Trustees has determined it is in the best interests of the residents of the Town to secure water rights for municipal purposes; and

WHEREAS, the Board of Trustees authorizes the Town Manager to execute the contracts for the purchase of those respective units; and

WHEREAS, in the 2022 Budget, the Town Board of Trustees authorized the appropriation and expenditures of funds from the water fund; and

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF
THE TOWN OF FREDERICK, WELD COUNTY, COLORADO THAT;**

Section 1. The following contracts for the purchase of CBT water rights are hereby ratified and approved:

a. Zabka Farms LLC; 7 units of CBT water at \$70,000 per unit for a total of \$490,000.

Section 2. The 2022 Budget for the Town of Frederick included funds for C-BT unit purchases.

Section 3. **Effective Date.** This resolution shall be become effective immediately upon adoption.

Section 5. **Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 3. **Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 12TH DAY OF APRIL, 2022.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan C. Martinez, MMC, Town Clerk

By _____
Tracie Crites, Mayor

**AGREEMENT FOR SALE AND PURCHASE OF UNITS OF
COLORADO-BIG THOMPSON PROJECT**

This Agreement for Sale and Purchase of Units of Colorado-Big Thompson Project (“Agreement”) is made and entered into this 12th day of March, 2022, by and between Zabka Farms, LLC (“Seller”), and the Town of Frederick, a Colorado municipal corporation (“Town”) (each a “Party” and together the “Parties”).

Recitals

- A. The Colorado-Big Thompson Project (“C-BT”) is administered by the Northern Colorado Water Conservancy District (“NCWCD”).
- B. Seller is the record owner of **seven (7)** C-BT units, with such ownership shown on the books of NCWCD (“Seller’s C-BT Units”), currently assigned under a Class D Allotment Contract to real property described as:

9157 COUNTY ROAD 44 MILLIKEN, CO 80543 –
22385 SW4 15 4 67 EXC UPRR RES & PT SE4 16 4 67 BEG SE COR SEC 16 N417' N87D37'W 417'
S417' S89D35'E 417' TO BEG

- C. NCWCD allocates water to Seller’s C-BT Units under a Class **D** Allotment Contract.
- D. Seller wishes to sell, convey, and assign to the Town, and the Town wishes to acquire, Seller’s C-BT Units on the terms and conditions given in this Agreement.

For and in consideration of the mutual promises, covenants, and conditions in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and the Town agree as follows:

- 1. **Purchase Price.** The purchase price for Seller’s C-BT Units is **\$70,000** per unit, for a total of **\$490,000** (“Purchase Price”).
 - 1.1 The Parties agree that Stewart Title Company, 12110 N. Pecos St., Suite 150, Westminster, CO, 80234, will act as the escrow agent for this transaction (“Escrow Agent”), according to the Escrow Agreement and Instructions attached as **Exhibit A**.
 - 1.2 No earnest money is required for this transaction.
 - 1.3 If all pre-conditions to closing have been met, then on or before the Closing Date, as the term “Closing Date” is defined in paragraph 8 below, the Town shall

deposit the Purchase Price with the Escrow Agent, in immediately available certified funds or cash.

- 1.4 If all pre-conditions to closing have been met, then on or before the Closing Date, the Town also shall deposit with the Escrow Agent the estimated NCWCD Fee and Assessment Credit, as that term is defined in paragraph 4 below, in certified Funds or cash.
 - 1.5 Turner Realty will receive from the Seller a commission of 2% of the total Purchase Price, to be paid from proceeds at closing.
 - 1.6 The Purchase Price, estimated NCWCD Fee and Assessment Credit, and estimated Town's Broker's Fee deposited with the Escrow Agent are the "Escrowed Funds."
 - 1.7 Seller shall pay all escrow and closing fees invoiced by the Escrow Agent, with such fees to be debited to Seller in the closing statement and paid to the Escrow Agent out of the Escrowed Funds.
 - 1.8 Any fee or commission due to a broker engaged by the Seller ("Seller Broker's Fee") will be debited to Seller in the closing statement and paid out of the Escrowed Funds.
 - 1.9 The Town Broker's Fee, if any, will be debited to Town in the closing statement and paid out of the Escrowed Funds.
2. Pre-conditions to closing. The Town's obligation to pay the Purchase Price and close on the transaction is expressly conditioned on each of the following:
- 2.1 Seller must have delivered to Town, at Seller's sole expense and within seven days of the date of this Agreement, copies of all documents in Seller's possession pertaining to Seller's unencumbered title to and right to transfer to the Town Seller's C-BT Units, including without limitation any property records documenting the separation of Seller's C-BT Units from specified real property and any records documenting the termination or release of any liens or encumbrances on or security interests in Seller's C-BT Units.
 - 2.2 If Seller's C-BT Units are used for irrigation of land or are tied to designated land in the records of NCWCD, Seller must have delivered to the Town, no earlier than 21 days and no later than 7 days before the Closing Date, a satisfactory ownership and encumbrance report for all such land ("O&E Report").
 - 2.3 As documented by the O&E Report, the records of NCWCD, and other records pertaining to ownership of Seller's C-BT Units, title to Seller's C-BT Units must

be good and merchantable in Seller as of the Closing Date, with such title free and clear of all liens, encumbrances, assessments, and security interests. The Town shall decide, in the reasonable exercise of its sole discretion, whether and when Seller has documented good and merchantable title to Seller's C-BT Units.

- 2.4 Seller must have completed all requirements of NCWCD for transfer of Seller's C-BT Units to the Town, and the NCWCD Board must have formally approved the transfer in writing.
- 2.5 Seller must have paid, directly to NCWCD, the transfer fee imposed by NCWCD for transfer of Seller's C-BT Units to the Town.
- 2.6 The Town's Board of Trustees must have approved the Town's acquisition of Seller's C-BT Units, including by virtue of directing the Mayor or Town administrators or staff to complete the acquisition.

3. Seller's warranties.

- 3.1 Seller warrants that it has, or that by the Closing Date it will have, good and marketable title to Seller's C-BT Units, along with the right and privilege to sell the same.
- 3.2 Seller warrants that there are, or that by the Closing Date there will be, no outstanding liens, mortgages, or other encumbrances on title to Seller's C-BT Units.
- 3.3 Seller warrants that no NCWCD fees or assessments are, or that by the Closing Date no NCWCD fees or assessments will be, outstanding or due and owing on Seller's C-BT Units.
- 3.4 Seller warrants that no other person or entity holds preemptive rights to purchase or lease Seller's C-BT Units.
- 3.5 Seller warrants that it has not entered into any agreement with a third party with respect to Seller's C-BT Units that may result in liability or expense to the Town based on the Town's acquisition of all or any portion of Seller's C-BT Units.
- 3.6 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any litigation, claim, or proceeding of any type, pending or threatened, that in any matter affects or pertains to Seller's C-BT Units.
- 3.7 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any existing violation of any federal, state, or local law, code, ordinance, rule, regulation, or requirement pertaining to Seller's C-BT Units.

4. NCWCD assessments. On the Closing Date, the NCWCD fees and assessments documented to have been paid on Seller's C-BT Units for the then-current water year will be pro-rated between the portion of the water year ending on the Closing Date and the portion of the water year remaining as of that date. The NCWCD fees and assessments for the portion of the water year remaining on the Closing Date ("NCWCD Fee and Assessment Credit") will be credited to Seller in the closing statement and paid to Seller out of the Escrowed Funds.
5. Use of water allocated to Seller's C-BT Units. Beginning on the day after the Closing Date, the Town will have sole use of water allocated by NCWCD to Seller's C-BT Units. Before and through the Closing Date, Seller will retain sole use of such water unless Seller and the Town enter into a separate agreement for the Town's temporary use of the water allocated to Seller's C-BT Units.
6. NCWCD requirements.
 - 6.1 The Parties shall promptly execute and deliver to NCWCD all required applications and other documentation required by NCWCD for transfer of Seller's C-BT Units to the Town, including without limitation an Application for a Temporary Use Permit, an Affidavit Regarding Base Water Supply, a completed Application for Change of Class D Allotment Contract, and any other documents required by NCWCD. The Parties shall work cooperatively to meet all deadlines for submittal of such materials for the NCWCD Board's consideration and approval at its next regular meeting.
 - 6.2 Seller shall pay, directly to NCWCD, the transfer fee of \$500 imposed by NCWCD for transfer of Seller's C-BT Units to the Town.
7. Section 1031 exchange. Seller may elect to structure this transaction as an exchange under Section 1031 of the Internal Revenue Code ("1031 Exchange"). In such event, Seller shall give written notice to the Town as provided in paragraph 9 below. The Parties shall confer to determine if a reasonable extension of the Closing Date is necessary for Seller to complete the 1031 Exchange. Any expenses related to a 1031 Exchange will be Seller's sole responsibility, but the Town will cooperate with the Seller in implementing the 1031 Exchange.
8. Closing. The Parties will consummate the transaction at a closing to take place electronically within 5 business days of the date on which all pre-conditions to closing, as described in paragraph 2 above, have been successfully completed.
 - 8.1 Closing Date. The actual date of the closing, which is expected take place on or before June 30, 2022, is the "Closing Date." This date may be extended by mutual

agreement of the parties as may be necessary to meet NCWCD schedule requirements.

- 8.2 Performance of closing. On the Closing Date, the Escrow Agent shall perform as described in the Escrow Agreement and Instructions attached as **Exhibit A**, including without limitation by distributing the total amount due to seller (Purchase Price + final NCWCD Fee and Assessment Credit – escrow and closing fees – any Seller Broker’s Fee) by wire transfer or in other immediately available funds; by distributing payment of the broker commission described in paragraph 1.5 above directly to Turner Realty by check or wire transfer; and by delivering to the Parties, by FedEx, UPS, or other delivery service with tracking, any final instruments or other documents memorializing the transaction, including without limitation the Bill of Sale and Assignment described in paragraph 8.3 below and Seller’s Certification of Warranties described in paragraph 8.4 below.
- 8.3 Bill of Sale and Assignment. No later than seven days before the Closing Date, Seller shall deliver to the Escrow Agent a good and sufficient Bill of Sale and Assignment acceptable to the Town and substantially in the form of attached **Exhibit B**. Seller shall execute the Bill of Sale and Assignment, but leave it undated; the Escrow Agent shall handwrite in the date on the Closing Date.
- 8.4 Seller’s Certification of Warranties. No earlier than seven days and no later than one day before the Closing Date, Seller shall deliver to the Escrow Agent a written certification that Seller’s warranties given in paragraph 3 above remain true and correct as of the Closing Date. In the event that Seller is unable to certify that one or more of the warranties remains true and correct as of the Closing Date, the Town may, at its sole option, proceed to closing notwithstanding such defects or, upon written notice to Seller, declare this Agreement terminated. In the event of such termination, the Parties will have no further rights or obligations hereunder.
9. Notices. All notices or other documents required to be sent to either Party under this Agreement must be in writing. Such notices or documents will be deemed effective upon receipt following delivery by certified mail, return receipt requested; email; personal delivery; or delivery by FedEx, UPS, or another delivery service with tracking. Notices or documents must be addressed and delivered as follows:

TO SELLER:

Zabka Farms, Inc.
Charles Bird, Registered Agent
617 6th Street
Greeley, CO 80631

TO TOWN:

Town of Frederick
Attn: Kevin Ash, Engineering Director
P.O. Box 435
401 Locust Street
Frederick, CO 80530
E-mail: kash@frederickco.gov

With copies by email only to the following:

Sarah Watson, Civil Engineer, Town of Frederick
swatson@frederickco.gov

Jason Meyers, Town Attorney
jmeyers@frederickco.gov

Jennifer DiLalla, Special Water Counsel
jdilalla@mwhw.com

TO ESCROW AGENT:

Stewart Title Company
Gina Cruz
12110 North Pecos St , Suite 150
Westminster, CO, 80234
Email: Gina.Cruz@stewart.com

The addresses above may be changed by written notice given in the manner provided above.

10. Default and remedies. In the event of default, the non-defaulting Party shall notify the defaulting Party in writing of such default, documenting the nature thereof. If such default is not cured within fourteen days, the non-defaulting Party will be entitled to all remedies available at law and in equity, including without limitation the remedy of specific performance and the remedy of damages.
11. Successors and assigns. This Agreement benefits and burdens the Parties and their respective successors and assigns; provided, however, that neither Party may assign its rights or obligations hereunder except with the prior written consent of the other Party.
12. Amendment or modification. This Agreement may be modified only by a signed writing executed by the Parties with the same formality as was this Agreement.
13. Time of the essence. Time is of the essence under this Agreement.

14. Attorney fees and other litigation costs. If either party initiates a court proceeding to enforce any provision of this Agreement, including without limitation an action for specific performance or for damages, the non-prevailing Party shall pay the prevailing Party's costs and fees for the proceeding, including reasonable attorney fees and reasonable expert witness fees.
15. Venue. The sole venue for any action to enforce this Agreement will be the District Court for Weld County, Colorado.
16. No continuing waiver of default. A party's waiver of any instance of default under this Agreement will not constitute a continuing waiver of any subsequent default concerning either the same or any other provision hereof.
17. No waiver of governmental immunity. Nothing in this Agreement constitutes or is to be deemed or construed as constituting a waiver of any privilege or immunity available to the Town under the statutes and constitution of the State of Colorado, including the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -119, as it may be amended.
18. Headings for convenience only. Paragraph headings and titles in this Agreement are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any term of this Agreement.
19. Non-severability. Each paragraph and sub-paragraph of this Agreement is intertwined with the others and is not severable unless by mutual written consent of the Parties.
20. Entire agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and any prior oral or written agreements pertaining to that subject matter have been merged or integrated into this Agreement.
21. Authority to execute Agreement. Each Party represents and warrants that the individual(s) executing this Agreement on that Party's behalf is authorized to do so and to bind such Party to the Agreement's terms. Each Party further represents and warrants that it is legally entitled to enter into this Agreement and to consummate the transaction described herein.
22. Execution in counterparts and electronic scans. This Agreement may be executed in counterparts, and all such executed counterparts together will constitute the Agreement. A legible electronic scan of the original Agreement and signatures in PDF format will be deemed an original, and such electronic scans will be binding for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement in counterparts on the date first written above.

By: _____
Duane D. Zabka, President

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____.

My commission expires _____.

Signatures continue on next page.



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Rusty O'Neal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

Consideration of Amendments to Articles 1 and 3 of the Frederick Land Use Code

Agenda Date: Town Board Meeting - April 12, 2022

Attachments:

- a. Proposed Ordinance
- b. Planning Commission Minutes
- c. PCR-2022-08A
- d. Map with .25 buffer

Finance Review:

Finance Director

Submitted by:

Ali van Deutekom
Planning Manager

Approved for Presentation:


Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Summary Statement:

This is a request to consider amendments to Articles 1 and 3 of the Frederick Land Use with regards to cemeteries.

Detail of Issue/Request:

Background Information:

In 2021, the Board of Trustees adopted a strategic plan. Within the focus area of *Community and Economic Vitality*, the Board established a goal of developing a revitalization strategy for 5th Street. As part of that effort, staff has initiated an exercise to identify land uses that, while allowed under the current zoning, may not support the shared goals of an active and vibrant downtown.

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One of these use types is cemetery. Cemeteries are currently permitted on several properties zoned “public” in our Downtown Development Area. The intent of the Downtown Development Area is to preserve and protect the existing, historic and unique character and provide a pedestrian-oriented shopping, dining, entertainment, and living center in the Frederick community. Typically, cemeteries are in direct conflict with these objectives. Staff is suggesting a quarter mile buffer be added, around the Downtown Development Area, where cemeteries are not permitted. Staff is also suggesting we clarify the definition of cemetery.

This item came to the Planning Commission on February 17, 2022. The Commission voted to recommend denial of the request with a vote of 4-0.

The Planning Commission stated the new definition of cemetery would add confusion surrounding mortuaries in downtown. The definition was presented to the Planning Commission as follows:

Cemetery means land used or intended to be used for the interment of the remains of human bodies or pets, whether such interment is above ground or below ground. The term “cemetery” includes graveyards, burial of the dead and dedicated for cemetery purposes, including ~~mausoleums, and mortuaries, tombs, and columbariums, when operated in conjunction with, and within the boundaries of, such cemetery.~~

The Planning Commission suggested staff adjust the presented definition, re-notice the code amendment and bring the item back to a later Planning Commission meeting date for consideration. The Planning Commission is a recommending body so the item still moved forward to the Board of Trustees with a recommendation of denial. The Board of Trustees heard the item at the February 22, 2022 meeting. The Board of Trustees agreed with the Commission and directed staff to make the change and take the item back to Planning Commission for approval.

Staff believes adjusting the definition by striking through the word “mortuaries,” as set out below, will remove any confusion. The Land Use Code defines “funeral home” to include mortuaries. Funeral homes are still permitted in the Downtown Development Area.

The item was re-noticed and the second Planning Commission was held March 17, 2022. The Commission voted to approve the request with a vote of 4-0.

The adjusted proposed code amendments are as follows;

Article 1

Section 1.15, Town of Frederick Land Use Code, is amended as follows (double strikethrough is deleted text and double underline is added text):

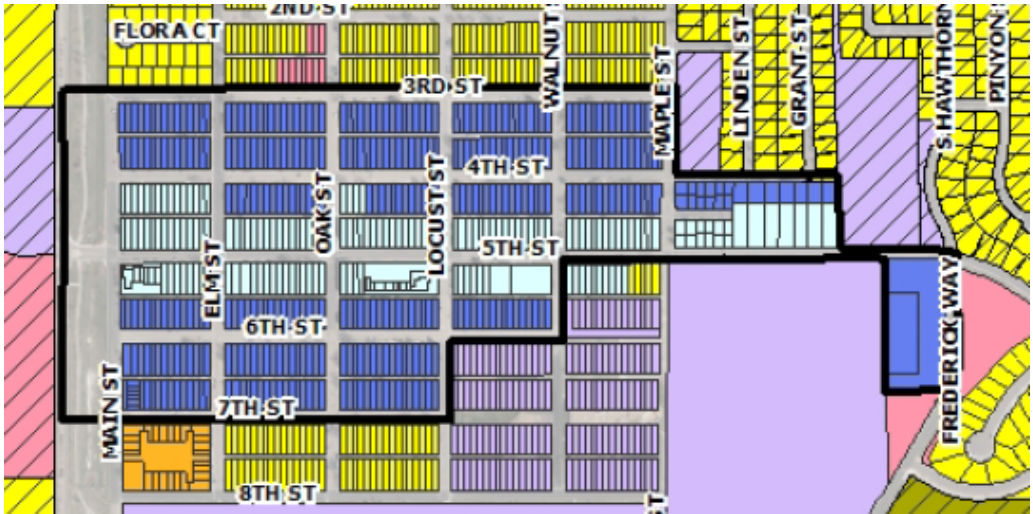
* * *

Cemetery means land used or intended to be used for the interment of the remains of human bodies or pets, whether such interment is above ground or below ground. The term “cemetery” includes graveyards, burial of the dead and dedicated for cemetery purposes, including ~~mausoleums, and mortuaries, tombs, and columbariums, when operated in conjunction with, and within the boundaries of, such cemetery.~~

* * *

Downtown means the original business district of the Town.

Downtown Development Area means the area that encompasses the Downtown and adjacent areas, which is outlined with a heavy black line in the figure below:



Article 3

Table 3-1, Table of Permitted Uses, in Section 3.4, Matrix of Permitted, Conditional, and Special Uses by Zoning District, Town of Frederick Land Use Code, is amended as follows (double underline is added text, three asterisks represent large amounts of unchanged text):

Table 3-1.B. Table of Permitted Institutional/Civic/Public Uses												
Any use not permitted in a zone either specifically or by interpretation by the Board of Trustees per Section 3.4(a) is hereby specifically prohibited												

* * *

INSTITUTIONAL/CIVIC/ <u>PUBLIC USES</u>												
Cemeteries.	C	C										P (28) <u>(29)</u>

* * *

Section 3. Section 3.4.2.b. is amended to add subsection (29) after subsection (28), to read as follows:

(29) Cemeteries shall not be located within the area within the Downtown Development Area, or within one-quarter mile of the boundaries of the Downtown Development Area.

Review Criteria:

Section 4.7.9.b. For the purpose of establishing and maintaining sound, stable, and desirable development within the Town, the text of this Code shall not be amended except:

- (1) To correct a manifest error in the text of this Code;
- (2) To provide for changes in administrative practices as may be necessary to accommodate changing needs of the community and the Town staff;
- (3) To accommodate innovations in land use and development practices that were not contemplated at the adoption of this Code; or
- (4) To further the implementation of the goals and objectives of the Comprehensive Plan.

The proposed amendments accommodate development practices that were not contemplated at the time of the adoption of the Downtown Code. The drafted amendments provide clarifications on definitions.

Public Notice:

This project was properly noticed according to the requirements of Section 4.5 of the Frederick Land Use Code.

Planning Commission:

Planning Commission was held March 17, 2022. The Commission voted to approve the request with a vote of 4-0.

Legal Comments:

The ordinance was prepared by the Town's Land Use Attorney.

Alternatives/Options:

The Board of Trustees may enact the request, decline to enact the request, amend the request, or table to a date certain.

Ordinance No.

Enact:

I move that Ordinance No. 1374 be approved.

Amendments:

I move that the following language be (added to / removed from) from Ordinance No. 1374.

Decline to Enact:

I move that Ordinance No. 1374 not be approved at this time.

Financial Considerations:

Not Applicable.

TOWN OF FREDERICK, COLORADO

ORDINANCE NO. 1374

AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO, AMENDING ARTICLE 1 AND ARTICLE 3 OF THE FREDERICK LAND USE CODE, SPECIFICALLY SECTIONS 1.15 AND 3.4, TO CLARIFY LOCATIONS WITHIN THE TOWN WHERE CEMETERIES MAY BE PERMITTED.

WHEREAS, the Board of Trustees of the Town of Frederick (“Board”) finds that the Town allows for cemeteries in certain zone districts; and

WHEREAS, the Board finds that cemeteries are not an appropriate use within the area that is subject to the Downtown Development Plan (“Downtown Development Area”) and within one quarter mile of the Downtown Development Area; and

WHEREAS, the Board finds that the definition of “cemetery” should be amended to clarify that the term “cemetery” includes columbaria; and

WHEREAS, the Board finds that the phrase “Downtown Development Area” should be defined in the Land Use Code; and

WHEREAS, the Board finds that amendment to the Town’s Land Use Code, Table 3-1.B., is necessary to ensure that cemeteries are placed within the Town appropriately, with due regard to the sensitivity of the use; and

WHEREAS, by Resolution _____, dated _____, the Planning Commission of the Town of Frederick approves the amendments set out in this Ordinance to the extent they constitute subdivision regulations, and recommends that the Board enact the amendments that are set out in this Ordinance.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, WELD COUNTY, COLORADO, AS FOLLOWS:

Section 1. Section 1.15, Town of Frederick Land Use Code, is amended as follows (double strikethrough is deleted text and double underline is added text):

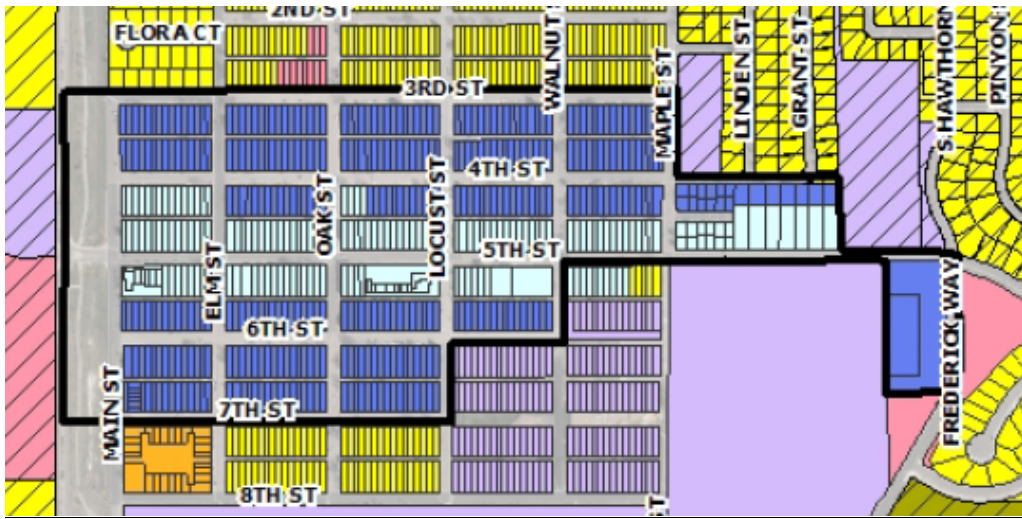
* * *

Cemetery means land used or intended to be used for the interment of the remains of human bodies or pets, whether such interment is above ground or below ground. The term “cemetery” includes graveyards, burial of the dead and dedicated for cemetery purposes, including mausoleums, and mortuaries, tombs, and columbariums, when operated in conjunction with, and within the boundaries of, such cemetery.

* * *

Downtown means the original business district of the Town.

Downtown Development Area means the area that encompasses the Downtown and adjacent areas, which is outlined with a heavy black line in the figure below:



* * *

Section 2. Table 3-1, Table of Permitted Uses, in Section 3.4, Matrix of Permitted, Conditional, and Special Uses by Zoning District, Town of Frederick Land Use Code, is amended as follows (double underline is added text, three asterisks represent large amounts of unchanged text):

Table 3-1.B. Table of Permitted Institutional/Civic/Public Uses Any use not permitted in a zone either specifically or by interpretation by the Board of Trustees per Section 3.4(a) is hereby specifically prohibited
--

* * *

INSTITUTIONAL/CIVIC/PUBLIC USES												
Cemeteries.	C	C									P	(28) (29)

* * *

Section 3. Section 3.4.2.b. is amended to add subsection (29) after subsection (28), to read as follows:

(29) Cemeteries shall not be located within the area within the Downtown Development Area, or within one-quarter mile of the boundaries of the Downtown Development Area.

Section 4. Effective Date. This Ordinance shall become effective immediately.

Section 5. Validity. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective

of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

Section 6. Necessity. The Board of Trustees of the Town of Frederick finds that this ordinance is necessary for the immediate preservation and protection of the health, safety, welfare and property of the inhabitants and owners of property in the Town of Frederick.

Section 7. Certification. The Town Clerk shall certify to the passage of this ordinance to the Weld County Clerk and Recorder's office, and make not less than one copy of the adopted Code available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 12 DAY OF APRIL, 2022.

ATTEST:

TOWN OF FREDERICK

By _____
Meghan Martinez, MMC, Town Clerk

By _____
Tracie Crites, Mayor



401 Locust Street • P.O. Box 435 • Frederick, CO 80530-0435

Phone: (720) 382-5500 • Fax: (720) 382-5520

www.frederickco.gov

MINUTES
TOWN OF FREDERICK
PLANNING COMMISSION
MEETING CONDUCTED IN PERSON AND VIA ZOOM
MARCH 17, 2022
6:00 PM

CALL TO ORDER: At 6:02 p.m. Chairperson Moe called the meeting to order and requested roll call.

ROLL CALL:

- Present: Chairperson Moe, Vice Chair teVelde, Commissioner Stark, and Commissioner Scott.
 - Commissioner Conroy was not present
- Staff: Planning Manager Ali van Deutekom, Planner Maureen Welsh, Town Manager Bryan Osler, Assistant Town Manager Ryan Johnson, Deputy Town Clerk Taylor Kittilson, and Land Use Attorney Todd Messenger.

APPROVAL OF AGENDA: There were no changes to the agenda as presented.

APPROVAL OF FEBRUARY 17, 2022 MINUTES: Motion by Commissioner Stark and seconded by Vice Chair teVelde to approve the February 17, 2022 Minutes. Upon roll call vote, motion passed unanimously.

CONSIDERATION OF 25/52 EAST SUBAREA PLAN:

Assistant Town Manager Ryan Johnson presented the proposed subarea plan.

Applicant Robert Kain (188 W Randolph Street, Suite 200, Chicago, IL 60601) addressed the commission with a short presentation.

At 7:33 Chairperson Moe opened the public hearing.

Bruce Nickerson (PO Box 741 344 Arvada, CO 80006) addressed the commission to state that he enjoyed the presentation, and thanked staff for their time.

At 7:34 Chairperson Moe closed the public hearing.

Motion by Commissioner Stark and seconded by Vice Chair teVelde to approve PCR-2022-07 A, a Resolution of the Planning Commission Recommending Approval of the 25/52 East Subarea Plan. Upon roll call vote, motion passed unanimously.

CONSIDERATION OF LAND USE CODE AMENDMENTS TO ARTICLES 1 & 3 IN REFERENCE TO CEMETERIES:

Planning Manager Ali van Deutekom presented the proposed amendments.

Built on What Matters.

Motion by Commissioner Stark and seconded by Vice Chair teVelde to approve PCR-2022-08 A, a Resolution of the Planning Commission Recommending Approval of Amendments to the Town of Frederick Land Use Code Articles 1 and 3 in reference to cemeteries. Upon roll call vote, motion passed unanimously.

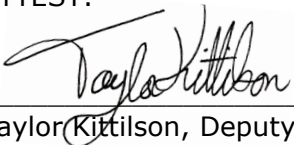
OTHER BUSINESS:

There being no further business of the Planning Commission, Chairperson Moe adjourned the meeting at 7:39 PM.

Approved by the Planning Commission:

Tracy Moe, Chairperson

ATTEST:



Taylor Kittilson, Deputy Town Clerk

1 **PCR-2022-08A**

2 **A Resolution of the Planning Commission Recommending Approval of**
3 **Amendments to the Town of Frederick Land Use Code Articles 1 and 3**

4
5 Be it resolved by the Planning Commission of the Town of Frederick, Colorado:

6
7 Section 1. The Frederick Planning Commission finds that:

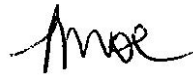
8 1.1 Amendments to Land Use Code Sections 1 and 3 to clarify the cemetery
9 definition and define the Downtown Development Area and ensure
10 cemeteries are placed appropriately.

11 1.2 Said amendments generally conform with the applicable requirements of
12 Section 4.7.9.b. of the Frederick Land Use Code.

13 Section 2. This resolution constitutes the written report, findings and decision of the
14 Town of Frederick Planning Commission.

15 Section 3. On the basis of the above, the Town of Frederick Planning Commission
16 recommends approval of the application.
17

18
19 This resolution approved this 17th day of March, 2022, by a vote of 4 to 0.
20

21 

22 _____
23 Tracy Moe, Chairman, Planning Commission
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34



TOWN OF FREDERICK

Downtown Development Plan Zoning Use Analysis

January 27, 2022



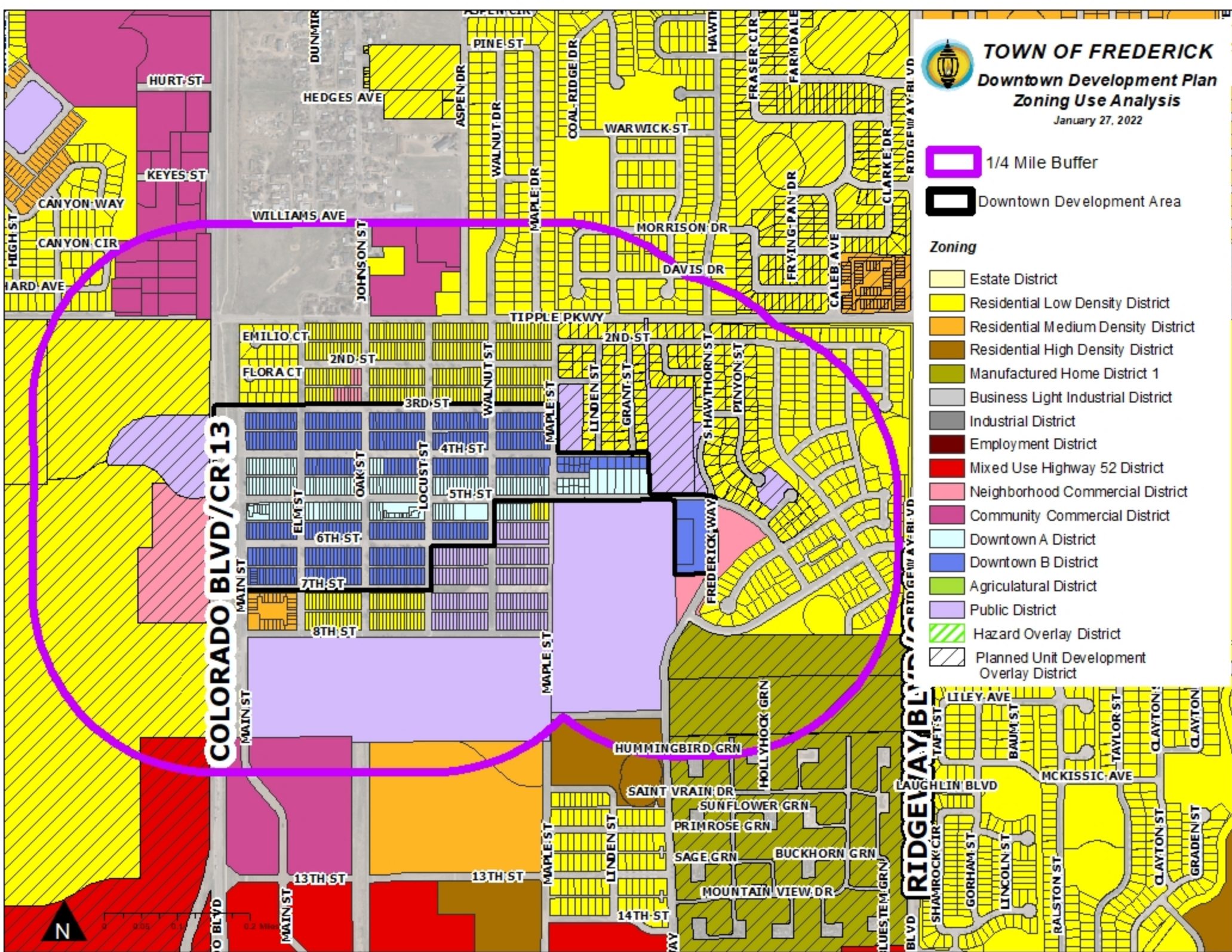
1/4 Mile Buffer



Downtown Development Area

Zoning

- Estate District
- Residential Low Density District
- Residential Medium Density District
- Residential High Density District
- Manufactured Home District 1
- Business Light Industrial District
- Industrial District
- Employment District
- Mixed Use Highway 52 District
- Neighborhood Commercial District
- Community Commercial District
- Downtown A District
- Downtown B District
- Agricultural District
- Public District
- Hazard Overlay District
- Planned Unit Development Overlay District





TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Tracie Crites, Mayor

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Rusty ONeal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

Consider Awarding a Design Contract for the Silver Birch Boulevard and Godding Hollow Parkway Intersection Improvement

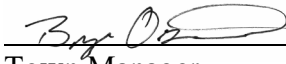
Agenda Date: Town Board Meeting – April 12, 2022

Attachments:

- a. Silver Birch Blvd and Godding Hollow Pkwy Intersection Improvement Contract – Martin/Martin
- b. Conceptual Plan Sheet – Project Overview
- c. Resolution 22-R-34

Finance Review: _____
Finance Director

Submitted by: Jason Berg
Civil Engineer, EI

Approved for Presentation: 
Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

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:

Bids for the design of the Silver Birch Boulevard & Godding Hollow Parkway Intersection Improvement project were opened on March 11, 2022 and staff is providing a recommendation for the award of this project to the most qualified proposer.

Built on What Matters.

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 Godding Hollow Parkway was recognized as a Tier-2 Short Term project, which are intersections identified for operational improvements and widening for high priority turn lanes. Additionally, the TMP Planning Action Committees (PAC) identified the Silver Birch Boulevard and Godding Hollow Parkway intersection as the fourth highest area of need in Town.

The Town Engineering Department, building upon momentum of the adjacent development that will be responsible for the installation of the ultimate roadway half-section west of centerline on Silver Birch Boulevard and south of centerline on Godding Hollow Parkway as well as a \$100,000 contribution to the construction of the future traffic signal, has moved forward to complete the ultimate design of this intersection.

The Silver Birch Boulevard and Godding Hollow Parkway intersection improvement recommendation calls for the installation of additional auxiliary acceleration and deceleration turn lanes as warranted, striping, signage and new traffic signals. Also included will be the installation of new ADA curb ramps sidewalk connections and pedestrian crossing controls for increased multimodal public safety for the area in the vicinity of the Legacy Elementary School. Finally, improved drainage infrastructure including curb and gutter.

On February 14, 2022 the Town solicited qualifications-based proposals from design firms for this project. Seven firms submitted proposals which were reviewed by Town engineering staff and the firm of Martin/Martin Consulting Engineers received the highest average score in a competitive evaluation process and contract negotiations are now finalized.

Legal/Political Considerations:

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 Godding Hollow 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 Martin/Martin as part of the Silver Birch Boulevard and Godding Hollow Parkway Intersection Improvement project is \$155,334. The Capital Improvement Project (CIP) Fund has budgeted amount of \$140,000 to cover the design services of this project.

The estimated cost of construction for the Silver Birch Boulevard and Godding Hollow Parkway intersection prepared by FHU for the TMP was identified as \$1,900,000. The contract amount for design does fit in the 8-10% of total typically anticipated for this type of work.

Staff Recommendation:

Staff recommends that the Board award the contract and approve Resolution 22-R-34.

INDEPENDENT CONSULTANT AGREEMENT

Town of Frederick
Silver Birch Boulevard and Godding Hollow Parkway Intersection Improvement

THIS INDEPENDENT CONSULTANT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20 22 (the "Effective Date") by and between the Town of Frederick, Colorado, a Colorado municipal corporation (the "Town") and Martin/Martin Consulting Engineers ("Consultant"), 12499W. Colfax Avenue, Lakewood, CO 80215, a Colorado company.

WHEREAS, The Town desires to engage the services of Consultant to provide the services more fully described on Exhibit A regarding construction of the Silver Birch Boulevard and Godding Hollow Parkway Intersection Improvement Project; and

WHEREAS, the Consultant wishes to become associated with the Town as an independent consultant for such purpose; 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 Consultant to be an independent consultant in relationship to the Town and not the Town's employee.

Consequently, Consultant will not be considered an employee or agent of the Town at any time under any circumstances, for any purpose.

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 appropriation.

- 2.02 Duties and Compensation. 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.
- 2.03 Background Check. 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 Monthly Report: Commencing thirty (30) days after the date of execution of this Agreement and every thirty (30) days thereafter, Consultant shall provide Town a written report of the status of the work with respect to the Scope of Services, Work Schedule, and other material information. Failure to provide any required monthly report may, at the option of Town, suspend the processing of any partial payment request.

SECTION 3: OPERATIONS

- 3.01 Expenses: Consultant shall not incur any expense or debt on behalf of 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.
- 3.03 Town Representative: Town will designate, prior to commencement of work, its project representative ("Town Representative") who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to Town Representative.
- 3.04 Work Compatible with State Contract: RESERVED.

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

- 4.01 Insurance. Consultant shall maintain and keep in force during the term hereof one or more policies of liability insurance written by one or more responsible insurance carrier(s), which will include protecting and indemnifying the Town in the following amounts:
- a) Comprehensive General Liability - \$2,000,000 combined aggregate
 - b) Automobile Liability - \$1,000,000
 - c) Workers Compensation

Each liability insurance policy shall name Town as an additional insured. Consultant shall furnish an original counterpart of such insurance policy to the Town upon the Town's written request. Consultant shall also furnish to Town appropriate certificates for such insurance which shall include a commitment by each insurance company to notify Town in writing of any material change, expiration or cancellation of the insurance policy required hereunder not less than thirty (30) days prior to such change, expiration or cancellation becoming effective. In addition to the above, Consultant shall obtain and keep in force during the term hereof such insurance required by any law or regulation, or prudent business practices.

- 4.02 Damage and Indemnity. Consultant assumes full responsibility for any and all damages caused by Consultant's intentional or negligent acts. Consultant agrees that it will indemnify and hold harmless 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 to the extent caused by the intentional or negligent acts, errors or omissions 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 Town, its successors or assigns, the full amount of any such costs, loss or damage which Town, its successors or assigns may sustain or incur, which is determined to be the responsibility of the consultant under this section.

SECTION 5: TERMINATION

- 5.01 Termination. Either party upon fifteen (15) 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, 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, plans, or other items provided by Town to the consultant in conjunction with this Agreement.

SECTION 6: MISCELLANEOUS

- 6.01 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.
- 6.02 Conflicts of Interest; Non-hire Provision. 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, 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. Consultant is expressly free to perform services for other parties while performing services for Town. For a period of six months following any termination, Consultant shall not knowingly, directly or indirectly solicit, or encourage leaving Town's employment, any employee, or any such employee, consultant, or consultant who has left Town's employment within one year of such employment or engagement.
- 6.03 Right to Injunction. RESERVED
- 6.04 Independent Consultant. This Agreement shall not render Consultant an employee, partner, agent of, or joint venture with Town for any purpose. Consultant is and will remain an independent consultant in their relationship to Town. Town shall not be responsible for withholding taxes with respect to Consultant's compensation hereunder. Consultant shall have no claim against 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 unless Independent Consultant or some other entity provides unemployment compensation coverage. Independent Consultant is obligated to pay federal and state income tax on any moneys paid pursuant to this contract.

- 6.05 Illegal Aliens. Consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant certifies that (i) Consultant does not knowingly employ or contract with any illegal aliens; (ii) Consultant has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States; and (iii) Consultant shall not enter into a contract with a subconsultant that fails to certify to the Consultant that the subconsultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Consultant shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If Consultant fails to comply with any requirement of this provision, Town may terminate this contract for cause and Consultant shall be liable for actual and consequential damages to the State. A Consultant that operates as a sole proprietor hereby swears or affirms under penalty of perjury that Consultant (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law; and (ii) shall produce proper identification prior to the effective date of this Contract.
- 6.06 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.
- 6.07 Applicable Law. This Agreement shall be construed according to the laws of the State of Colorado.
- 6.08 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.
- 6.09 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.
- 6.10 Attorney's Fees. If either party employs an attorney to enforce this Agreement, the party in default shall pay the prevailing party the reasonable expenses of the prevailing party, including but not limited to attorney's fees reasonably incurred whether occasioned by litigation or not.
- 6.11 Assignment and Subcontracting. Consultant may not delegate, assign or subcontract all of any part of its duties and obligations hereunder without obtaining the Town's prior written consent.
- 6.12 Waiver of Conditions. 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.

Town acceptance of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Consultant of responsibility for the quality or technical accuracy of the work. Town's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to Town under this Agreement. Consultant may not waive all or any part of its duties, obligations or conditions hereunder without obtaining the express written consent of the Town.

- 6.13 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 at a public meeting. This Agreement is confidential and proprietary between the parties and shall not be disclosed to any third party without an agreement between the parties to that effect in writing.
- 6.14 Third Party Rights. The parties do not intend to confer any benefit hereunder on any person or entity other than the parties hereto, their respective successors and assigns, and as otherwise expressly stated herein.
- 6.15 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.
- 6.16 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 as of the date first set forth above.

TOWN OF FREDERICK

CONSULTANT

By _____
Tracie Crites, Mayor

By _____
Name: _____, Title _____

ATTEST:

By _____
Meghan C. Martinez, Town Clerk



Town of Frederick
Engineering Dept.

Project:

Silver Birch Blvd &
Godding Hollow Pkwy
Intersection Improvement

01/12/2022	1
Not to Scale	

Conceptual Interim Intersection Improvement
Silver Birch Boulevard and Godding Hollow Parkway
Frederick, Colorado

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 22-R-34**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, TO AWARD
A CONTRACT FOR SILVER BIRCH BOULEVARD AND GODDING HOLLOW
PARKWAY INTERSECTION IMPROVEMENT DESIGN AND AUTHORIZING
THE TOWN MANAGER TO EXECUTE THE CONTRACT**

WHEREAS, in accordance with Chapter 4 Article V, the Town has solicited bids for the Silver Birch Blvd and Godding Hollow Pkwy Intersection Improvement Design; and,

WHEREAS, the Board of Trustees finds that the most qualified bidder for this contract award is Martin/Martin, 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 Martin/Martin, Inc. in the amount of \$155,334 as the most qualified bid for the Silver Birch Blvd and Godding Hollow Pkwy Intersection Improvement Design 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 12TH DAY OF APRIL, 2022.

TOWN OF FREDERICK

By: _____
Tracie Crites, Mayor

ATTEST:

By: _____
Meghan C. Martinez, MMC, Town Clerk



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Rusty O'Neal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

Termination of Reservoir Reservation

Agenda Date: Town Board Meeting – April 12, 2022

Attachments:

- a. Reservoir Reservation historic documents
- b. Termination Reservoir Reservation document
- c. Resolution 22-R-35

Finance Review:

Administrative Services

Submitted by:

Sarah Watson
Civil Engineer, I

Approved for Presentation:


Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

Strategic Plan Alignment:

This item supports the Community and Economic Vitality plan concentration. By terminating the reservation, the future lots of Eagle Business Park Filing 5 impacted by the reservation will no longer have that encumbrance.

Summary Statement:

A Reservoir Easement document was found during a recent due diligence investigation on properties within the approved Eagle Business Park Filing 5 plat area. This document reserves the right to construct a reservoir. This right carries with the property owners and can impact the lots within the Eagle Business Park, the Town, and Anadarko.

Detail of Issue/Request:

Built on What Matters.

In 1981 through 1988 numerous documents were recorded in relation to a reservoir proposed by the previous property owners. This reservoir was not to exceed 400 AF in capacity and was limited in size to 7 acres on each side of the Godding Hollow. This reservoir was to be used by the property owners. The location of the reservoir is not one that has been identified by any plan or staff as a future reservoir site. The existing owners will all need to sign the termination document.

The water rights appear to have been decreed for a High Country Reservoir with a 1980 Appropriation date for 400 AF of conditional water. A conditional water right requires additional diligence decrees and there does not appear to be evidence of any filed with the State. The Town will need to continue to investigate the status of the water rights. Without the water rights being abandoned or cancelled the owner may be able to exercise a right of condemnation.

Legal Comments:

The Town's general council, land use council, and water attorney have reviewed the Reservoir Easement document and the proposed Termination document.

Alternatives/Options:

The Town may decide to not sign the termination document.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends the Board approve resolution 22-R-35 allowing the Town Manager to sign the termination document once all conditions are met. The condition within the resolution is that if the status of the water rights is found to be or can be abandoned or cancelled the Town Manager can sign the termination document.

600M

BOOK

940

Recorded at 8:00 o'clock

JUL 6 1981

Weld County, Colorado

Reception No. 1862471

Recorder.

2-1

May 1st 1981

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JUL-6-81

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HIGH COUNTRY TURF, a Partnership,

whose address is 7178 I-25 Frontage Road, Erie,

County of Weld, State of

Colorado, for the consideration of One Hundred
Ninety Thousand and no/100-----(\$190,000.00)-----
dollars, in hand paid, hereby sell(s) and convey(s) to

JAMES T. WESTERVELT, Jr.

whose legal address is Longmont,

County of

Weld, and State of Colorado,

the following real property in the

County of Weld

, and State of Colorado, to wit:

That part of the SE $\frac{1}{4}$ of Section 26, Township 2 North, Range 68 West of the 6th
P.M., lying East of the Godding Hollow Ditch together with one share of the
common stock of the Lower Boulder Reservoir and Ditch Company, except therefrom
Lot A of Recorded Exemption RE-506, said Lot A also being described as follows:

BEGINNING at the Southeast corner of said Section 26 and considering the East
line of said Section as bearing N00°15'40"E with all other bearings contained
herein relative thereto;

thence N00°15'40"E, 1092.39 feet to the True Point of Beginning;

thence N00°15'40"E, 183.36 feet;

thence S89°27'30"W, 278.70 feet;

thence S02°42'56"E, 184.07 feet;

thence N89°15'57"E, 269.15 feet to the True Point of Beginning;

But reserving to Grantor an easement to, jointly with Grantee,
design, construct, develop, and operate
a water storage reservoir in accordance with terms and conditions of Amended
Application for Water Storage Right, Case No. 80 CW 348 and of Amended Application
for Approval of Plan for Augmentation, Case No. 80 CW 349 and decrees resulting
therefrom.

~~also known as street and block number~~

Taxes for 1981 to be paid by Grantee.

No mineral rights are conveyed by this instrument.

with all its appurtenances, and warrant(s) the title to the same, subject to an existing
Federal Land Bank Loan No. 0791171-7-0, rights of way, easements, mineral grants
and reservations, and water covenants of record and all Weld County Zoning
and Building provisions; said Land Bank loan not being assumed by Buyer but
being payable as set forth in Attachment A attached hereto and hereby by
reference made a part hereof.

Signed this

15th

day of

June, 1981

HIGH COUNTRY TURF

By:

John W. Butcher, Partner

STATE OF COLORADO,

County of Boulder

ss.

The foregoing instrument was acknowledged before me this
day of June, 1981, by JOHN W. BUTCHER, a Partner in the
Partnership doing business as HIGH COUNTRY TURF.

My commission expires August 13, 1983.

Witness my hand and official seal.

Notary Public

2-2

ATTACHMENT "A"
Payment Schedule

It is agreed and understood that Seller and Purchaser will share proportionately the five (5%) per cent Federal Land Bank Stock Fee and the one-half (1/2%) per cent loan fee incurred in the Federal Land Bank Loan of Three Hundred, Twenty-Five Thousand (\$325,000.00) Dollars currently existing on the South Half of Section 26. The net loan proceeds of the above loan were Three Hundred, Seven Thousand, One Hundred, Twenty-Five (\$307,125.00) Dollars. Thus, the payment proration of the UNPAID BALANCE of One Hundred, Sixty-Five Thousand (\$165,000.00) Dollars shall be One Hundred, Sixty-Five Thousand Three Hundred, Seven Thousand, One Hundred, Twenty-Five (165,000/307,125), times the payment due.

It is agreed the UNPAID BALANCE will be secured by a Westervelt note having a variable interest rate the same as the Federal Land Bank Loan, No. 0791171-7-0. It is also agreed and understood that the Westervelt note will have semi-annual installments due each May 15 and November 15; thus, the first such payment will be due November 15, 1981 and interest will start to accrue on the date of closing.

It is agreed the DOWN PAYMENT under this Agreement is Twenty-Five Thousand (\$25,000.00) Dollars and it is to be paid as follows: Five Thousand (\$5,000.00) Dollars hereby receipted for; Five Thousand (\$5,000.00) Dollars on May 15, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on August 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on September 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on October 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on November 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on December 1, 1981; and Two Thousand, Five Hundred (\$2,500.00) Dollars on January 1, 1982.

It is agreed the growing crops are to be used as security for payments recited hereinabove.

All payments shall be made jointly to Seller and Federal Land Bank. Purchaser shall have a right to prepay any amount at any time without prepayment penalty. Seller agrees to obtain and furnish to Purchaser a partial release upon payment in full.

BOOK 940

Recorded at 800 o'clock A M, JUL 6 1981 Weld County, Colorado
Reception No. 1862471 2-1 Recorder.

HIGH COUNTRY TURF, a Partnership,

whose address is 7178 I-25 Frontage Road, Erie,

County of Weld, State of

Colorado, for the consideration of One Hundred
Ninety Thousand and no/100-----(\$190,000.00)-----
dollars, in hand paid, hereby sell(s) and convey(s) to

JAMES T. WESTERVELT, Jr.

whose legal address is Longmont, County of

Weld, and State of Colorado, the following real property in the

County of Weld, and State of Colorado, to wit:

That part of the SE $\frac{1}{4}$ of Section 26, Township 2 North, Range 68 West of the 6th
P.M., lying East of the Godding Hollow Ditch together with one share of the
common stock of the Lower Boulder Reservoir and Ditch Company, except therefrom
Lot A of Recorded Exemption RE-506, said Lot A also being described as follows:

BEGINNING at the Southeast corner of said Section 26 and considering the East
line of said Section as bearing N00°15'40"E with all other bearings contained
herein relative thereto;

thence N00°15'40"E, 1092.39 feet to the True Point of Beginning;

thence N00°15'40"E, 183.36 feet;

thence S89°27'30"W, 278.70 feet;

thence S02°42'56"E, 184.07 feet;

thence N89°15'57"E, 269.15 feet to the True Point of Beginning;

But reserving to Grantor an easement to design, construct, develop, and operate
a water storage reservoir in accordance with terms and conditions of Amended
Application for Water Storage Right, Case No. 80 CW 348 and of Amended Application
for Approval of Plan for Augmentation, Case No. 80 CW 349 and decrees resulting
therefrom.

~~also known as street and number~~

Taxes for 1981 to be paid by Grantee.

No mineral rights are conveyed by this instrument.

with all its appurtenances, and warrant(s) the title to the same, subject to an existing
Federal Land Bank Loan No. 0791171-7-0, rights of way, easements, mineral grants
and reservations, and water covenants of record and all Weld County Zoning
and Building provisions; said Land Bank loan not being assumed by Buyer but
being payable as set forth in Attachment A attached hereto and hereby by
reference made a part hereof.

Signed this 15th day of June, 1981

HIGH COUNTRY TURF

By: John W. Butcher, Partner

STATE OF COLORADO,

County of Boulder

The foregoing instrument was acknowledged before me this
day of June, 1981, by JOHN W. BUTCHER, a Partner in the
Partnership doing business as HIGH COUNTRY TURF.

My commission expires August 13, 1983.

Witness my hand and official seal.

This document to be rerecorded to
include the specific performance contract
dated May 12, 1981 and a 2 page addendum.

State Documentary Fee

Date JUL 6 1981

\$ 19.00

ATTACHMENT "A"
Payment Schedule

It is agreed and understood that Seller and Purchaser will share proportionately the five (5%) per cent Federal Land Bank Stock Fee and the one-half ($\frac{1}{2}\%$) per cent loan fee incurred in the Federal Land Bank Loan of Three Hundred, Twenty-Five Thousand (\$325,000.00) Dollars currently existing on the South Half of Section 26. The net loan proceeds of the above loan were Three Hundred, Seven Thousand, One Hundred, Twenty-Five (\$307,125.00) Dollars. Thus, the payment proration of the UNPAID BALANCE of One Hundred, Sixty-Five Thousand (\$165,000.00) Dollars shall be One Hundred, Sixty-Five Thousand/ Three Hundred, Seven Thousand, One Hundred, Twenty-Five ($165,000/307,125$), times the payment due.

It is agreed the UNPAID BALANCE will be secured by a Westervelt note having a variable interest rate the same as the Federal Land Bank Loan, No. 0791171-7-0. It is also agreed and understood that the Westervelt note will have semi-annual installments due each May 15 and November 15; thus, the first such payment will be due November 15, 1981 and interest will start to accrue on the date of closing.

It is agreed the DOWN PAYMENT under this Agreement is Twenty-Five Thousand (\$25,000.00) Dollars and it is to be paid as follows: Five Thousand (\$5,000.00) Dollars hereby receipted for; Five Thousand (\$5,000.00) Dollars on May 15, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on August 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on September 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on October 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on November 1, 1981; Two Thousand, Five Hundred (\$2,500.00) Dollars on December 1, 1981; and Two Thousand, Five Hundred (\$2,500.00) Dollars on January 1, 1982.

It is agreed the growing crops are to be used as security for payments recited hereinabove.

All payments shall be made jointly to Seller and Federal Land Bank. Purchaser shall have a right to prepay any amount at any time without prepayment penalty. Seller agrees to obtain and furnish to Purchaser a partial release upon payment in full.

This document to be rerecorded to include the specific performance contract dated May 12, 1981 and a 2 page addendum.

The printed portions of this form approved by the
Colorado Real Estate Commission (SC 25-12-77)

**SPECIFIC PERFORMANCE CONTRACT
(FARM AND RANCH)**

Longmont

Colorado

May 12,

19 81

RECEIVED FROM JAMES T. WESTERVELT, JR.

Purchaser (as joint tenants), the sum of \$ 5,000.00, in the form of a personal check

to be held by HIGH COUNTRY TURF

as earnest money and part payment for the following described real estate situate in the

County of Weld

Colorado, to wit:

That part of the South Half of Sec. 26; T2N; R68W of the 6th P.M., Weld County, lying east of the existing drainage ditch excepting therefrom a set of farm improvements consisting of a 3 bedroom house and outbuildings having an address of 7201 Weld County Road 11, Longmont, Colorado 80501, together with a yard area of approximately 1 acre;

with all easements and rights of way appurtenant thereto, all improvements thereon and all fixtures of a permanent nature currently on the premises, except as hereinafter provided, in their present condition, ordinary wear and tear excepted, known as _____

which property purchaser agrees to buy upon the following terms and conditions, for the purchase price of \$ 190,000.00

payable as follows: \$ 5,000.00 hereby received for, and the balance of the down payment and remaining unpaid balance to be paid in accordance with the schedule of Attachment "A".

Cost of any appraisal for loan purposes to be obtained after this date shall be paid by _____

1. If a note and trust deed or mortgage is to be assumed, the purchaser agrees to apply for a loan assumption if required and purchaser agrees to pay (1) a loan transfer fee not to exceed \$ _____ and (2) an interest rate not to exceed _____% per annum. If the lender's consent to a loan assumption is required, this contract is expressly conditioned upon obtaining such consent without change in the terms and conditions of such loan except as above stated.

If a secured or unsecured loan is to be carried by the seller, seller shall not be obligated to carry said loan for any person or entity in lieu of the purchaser named herein.

2. Price to include the following personal property:

to be conveyed by bill of sale at time of closing in their present condition, free and clear of all personal property taxes, liens and encumbrances, except:

and except any personal property liens in any encumbrance specified in paragraph 5.

The following fixtures of a permanent nature are excluded from this sale: Portable corrals.

3. Price to include the following water rights: One (1) common share of the Consolidated Lower Boulder Reservoir and Ditch Company.

4. ~~XXXXXX~~ A current commitment for title insurance policy in an amount equal to the purchase price, at seller's option and expense, shall be furnished the purchaser on or before May 13, 19 81. If seller elects to furnish said title insurance commitment, seller will deliver the title insurance policy to purchaser after closing and pay the premium thereon.

5. Title shall be merchantable in the seller, except as stated in this paragraph and in paragraph 12. Subject to payment or tender as above provided and compliance with the other terms and conditions hereunder by purchaser, the seller shall execute and deliver a good and sufficient general warranty deed to said purchaser on June 15, 19 81, or, by mutual agreement, at an earlier date, conveying said property free and clear of all taxes, except the general taxes for 19 81, payable January 1, 19 82, and except a Federal Land Bank loan, No. 0791171-7-0 in the amount of \$325,000.00 which shall be payable as provided in Attachment "A";

free and clear of all liens for special improvements now installed, whether assessed or not; free and clear of all liens and encumbrances except:

and except the following easements: those of record;

and subject to building and zoning regulations and the following restrictive covenants: those of record;

Any encumbrance required to be paid may be paid at the time of settlement from the proceeds of this transaction or from any other source.

6. General taxes for the year of closing shall be ~~proportioned to date of delivery of deed based on the most recent levy and the most recent assessment.~~ ^{paid by the purchaser.} Prepaid rents, water rents, sewer rents, and interest on encumbrances, if any, ~~and said water rents amounting to \$770.00 shall be paid by purchaser.~~

~~shall be proportioned to date of delivery of deed~~

7. With respect to the growing crops the seller and purchaser agree as follows: Purchaser shall be entitled to all the landlord's share of the 1981 crop.

8. The hour and place of closing shall be as designated by _____

9. Possession of premises shall be delivered to purchaser on May 15, 1981

subject to the following leases or tenancies: a one-year farm lease with Alfred Sater. Seller has afterfeed rights with the farm lease which transfer to Purchaser.

10. The risk of loss from any damage to the improvements by fire or other casualty prior to date of closing shall be on the seller, provided, however, that if the seller shall maintain insurance on said improvements which will compensate for the full replacement value thereof, the seller may at his option assign the proceeds of said insurance to purchaser, in which case the purchaser shall complete the transaction as herein provided. The risk of loss for any damage to growing crops, by fire or other casualty shall be borne by the party entitled to said crops as provided in paragraph 7 and such party shall be entitled to the insurance proceeds.

11. Time is of the essence hereof, and if any payment or any other condition hereof is not made, tendered or performed by either the seller or purchaser as herein provided, then this contract, at the option of the party who is not in default, may be terminated by such party, in which case the non-defaulting party may recover such damages as may be proper. In the event of such default by the seller, and the purchaser elects to treat the contract as terminated, then all payments made hereon shall be returned to the purchaser. In the event of such default by the purchaser, and the seller elects to treat the contract as terminated, then all payments made hereunder shall be forfeited and retained on behalf of the seller. In the event, however, the non-defaulting party elects to treat this contract as being in full force and effect, the non-defaulting party shall have the right to an action for specific performance and damages.

12. Except as stated in paragraph 5, if title is not merchantable and written notice of defect(s) is given by the purchaser or purchaser's agent to the seller or seller's agent within the time herein provided for delivery of deed and shall not be rendered merchantable within 30 days after such written notice, then this contract, at purchaser's option, shall be void and of no effect and each party hereto shall be released from all obligations hereunder and the payments made hereunder shall be returned forthwith to purchaser upon return of the abstract, if any, to seller; provided however, that in lieu of correcting such defect(s), seller may, within said 30 days, obtain a commitment for owner's title insurance policy in the amount of the purchase price reflecting title insurance protection in regard to such defect(s), and the purchaser shall have the option of accepting the then existing insured title in lieu of such merchantable title. The seller shall pay the full premium for such owner's title insurance policy, and the abstract, if any, shall be returned by the purchaser.

13. Additional provisions: See attached addendum forming a part hereof.

14. If this proposal is accepted by the seller in writing on or before _____, 19____, this instrument shall become a contract between seller and purchaser and shall inure to the benefit of the heirs, successors and assigns of such parties.

James T. Wolschke 5-13-81
Purchaser Date Agent
Purchaser Date By: _____

Seller accepts the above proposal this _____ day of _____, 19____ and agrees to pay a commission of _____% of the gross sales price for services in this transaction, and agrees that, in the event of forfeiture of payments made by purchaser, such payments shall be divided between the seller's broker and the seller, one-half thereof to said broker, but not to exceed the commission, and the balance to the seller.

High Country Trail by John W. Batchelor 5-13-81
Seller Seller

Purchaser's Address _____

Seller's Address _____

ADDENDUM I

It is understood that nine (9) shares of the preferred stock of the Consolidated Lower Boulder Reservoir and Ditch Company were sold to the City of Lafayette and a covenant filed of record on September 9, 1980 (see Attachment "B").

It is understood Seller has filed an application for approval of plan of augmentation in the District Court in and for Water Division No. 1, State of Colorado, Case No. 80-CW-349 which provides *inter alia* for a Four Hundred (400) acre-foot storage reservoir and an unnamed 2.08 c.f.s. irrigation well to be completed. It is understood a well permit will be issued and available to drill said irrigation well during the calendar year 1981. In the event said permit is not available to Purchaser in sufficient time to drill and complete said well prior to the 1982 irrigation season, Seller will deliver to Purchaser sufficient water either through the existing ditch system or through the existing pipeline system from the Johnson Well No. 1 to irrigate the subject acreage. In the event ditch water is supplied, Purchaser will pay the water assessments and in the event well water is supplied, Purchaser will pay the actual cost of energy necessary to pump the water to the acreage. This arrangement to supply water shall continue until an alternate water system becomes available to Purchaser. In the event tests indicate a well is not practical on Purchaser's land, Seller will make available sufficient land and appropriate easements thirty (30') feet in width without additional cost to Purchaser to locate a well on Seller's land. In the event a well cannot be completed on either Purchaser's land or Seller's land, Purchaser shall hereby become a one-half ($\frac{1}{2}$) undivided owner in and to the existing Johnson Well No. 1, together with appropriate thirty (30') foot wide easements to operate Purchaser's interest therein, said easements and undivided interest in the Johnson Well No. 1 to be conveyed to Purchaser without additional cost.

It is agreed and understood that the unnamed irrigation well set forth hereinabove is to be the sole property of Purchaser.

JWB
JW

ADDENDUM I (Continued)

It is agreed and understood the Four Hundred (400) acre-foot storage reservoir will be constructed on land jointly owned by Purchaser and Seller and will be jointly owned and operated by the owners of land in the South Half of Section 26 and Purchaser will share with Seller irrigation and augmentation rights in and to said storage reservoir. Neither party hereto shall be obligated to spend more than Ten Thousand (\$10,000.00) Dollars in the construction of said reservoir without the mutual consent of the parties hereto. Appropriate easement rights to construct, develop and operate said structure are hereby reserved.

JWB
TW

AGREEMENT

It is hereby agreed the ADDENDUM 1 of an Agreement dated May 12, 1981 between James T. Westervelt and High Country Turf be amended to reflect the following provisions:

1. The existing well identified as the Johnson Well No. 1 is to become and by this Agreement does become the joint property of High Country Turf and James T. Westervelt subject to the following conditions and terms;

a. The well including the pump, motor and associated electrical network is the joint property of the parties hereto. Each party shall have an undivided one-half (1/2) interest thereto together with a right of way to enter upon the property of each of the parties hereto for service and operation of the machinery and equipment forming the subject matter of this Agreement.

b. The parties hereto shall share in the expenses involved in operation and maintenance of the subject well including accrued expenses (legal) in prosecuting Water Division Case 80-CV-349. The accrued legal expenses to date are as follows: (see attached statements)

(1) Rocky Mountain Consultants.....	\$ 984.59
(2) R. Moses.....	1,771.64

c. In the event a dispute arises as to the priorities of using the well, it shall be resolved by one party having the right to use the well on even numbered calendar days and the other party having the right to use the well on odd numbered calendar days.

d. All expenses involved in using the well by the party Westervelt from the end of the existing pipeline at the boundary of the respective parties hereto shall be the sole expense of Westervelt. In other words any new line required from the existing pipeline to a point on Westervelt's land shall be Westervelt's sole expense.

e. All expenses involved in leasing water from the city of Lafayette under the Tull/Lafayette agreement shall be the sole expense of the party leasing same.

f. The unnamed irrigation well forming part of the water division case mentioned above and forming a part of the May 12, 1981 Agreement mentioned

above shall be the joint property of the parties hereto. It is agreed said well will be located on Westervelt's property unless mutually agreed otherwise.

g. In the event the unnamed irrigation well permit is granted, and High Country Turf elects not to participate in the drilling and completion thereof, all rights and ownership of said unnamed well shall be solely Westervelt's. Documents reflecting this provision will be prepared and signed by the parties to this Agreement at the time the well permit is issued.

h. The remaining provisions of the May 12, 1981 Agreement not in conflict with provisions herein shall remain in effect.

Dated this 26th day of January, 1982.

James T. Westervelt
James T. Westervelt
HIGH COUNTRY TURF

By: John W. Butcher
General Partner

This agreement between High Country Turf & James T. Westervelt. Dated the 26th day of Jan 1982 is being recorded in Reference to Book 940, Reception # 1862471 and to Book 936 Reception # 1847907

James T. Westervelt
Oct 8, 1984

AR2149527

B 1203 REC 02149527 07/27/88 12:43 \$18.00 1/006
F 2099 MARY ANN FEUERSTEIN CLERK & RECORDER WELD CO, CO

RESERVOIR AGREEMENT

1. PARTIES. The parties to this Reservoir Agreement are

HIGH COUNTRY TURE a Colo. General Partnership
("Owner") and JAMES T. WESTERVELT, JR. ("JTW").

2. RECITALS AND PURPOSE. Owner is the owner of a parcel of land located in Section 26, T 2 N, R 68 W of the 6th P.M. in Weld County, Colorado. JTW is the owner of an adjacent parcel of land in the same Section. Pursuant to an earlier agreement between the parties and/or their assignors, JTW was granted an easement, right and license to jointly construct, with Owner's assistance, a reservoir on and across a portion of Owner's land and a portion of JTW's land. To date, the reservoir has not been constructed. However, the parties desire to identify the location of the proposed reservoir because of Owner's intention to subdivide and sell its parcel of land to third parties. The purposes of this Agreement is to locate the approximate location of the proposed reservoir and to set forth further terms and conditions.

3. REAFFIRMATION OF AGREEMENT. By an agreement called "ADDENDUM I", recorded in Book 954, Reception 1875538 of the records of the Clerk and Recorder of Weld County, the parties agreed, in part, as follows (with Owner as Seller and JTW as Purchaser):

It is agreed and understood the Four Hundred (400) acre-foot storage reservoir will be constructed on land jointly owned by Purchaser and Seller and will be jointly owned and operated by the owners of land in the South Half of Section 26 and Purchaser will share with Seller irrigation and augmentation rights in and to said storage reservoir. Neither party hereto shall be obligated to spend more than Ten Thousand (\$10,000) Dollars in the construction of said reservoir without the mutual consent of the parties hereto. Appropriate easement rights to construct, develop and operate said structure are hereby reserved.

Except as modified by this Agreement, the previous rights, titles, interests, licenses, covenants and easements contained in said Addendum I are hereby ratified and reaffirmed. The parties acknowledge that as of the date of this agreement, no adjudication, decree or permit has been obtained for the construction of the reservoir.

4. LOCATION OF RESERVOIR. The proposed location of the reservoir shall be as follows:

The most easternly portion of Lot A of Exemption No.

1313-26-3-RE 865, lying West of, and immediately adjacent to, the Godding Hollow Ditch as it is presently located, all as shown on the attached Exhibit A, said proposed site being shown by cross-hatched lines, and extending in a southerly direction as may be required by size to satisfy augmentation requirements; lying in the S 1/2 of Section 26, Township 2 North, Range 68 West of the 6th Prime Meridian, Weld County, Colorado, AND INCLUDING that portion of land presently owned by JTW which is adjacent to the above described parcel, as described as that part of the Southeast 1/4 of Section 26, Township 2 North, Range 68 West of the 6th Prime Meridian lying East of the Godding Hollow Ditch, excepting therefrom a parcel known as LOT A of Recorded Exemption RE-506, as may be needed to construct the reservoir.

It is acknowledged and agreed by the parties that the surface size of the reservoir, exclusive of structures and earthen works, shall not exceed 7 acres, ^{on each side of the} Any provision of the previous agreements notwithstanding, there is no affirmative duty to construct a reservoir having a capacity of 400 acre feet, said size being only the maximum capacity and that a reservoir of smaller size and capacity is permissible.

Yes
Godding Hollow Ditch for a total of 14 acres.
gy
J. W.

5. COMPENSATION. The parties hereby agree that the then record owner of the parcel(s) of land on which the reservoir will be constructed shall be compensated for the loss of the use of the area which is consumed by the reservoir (including structures and earthenworks) at the rate of \$1,325.00 per acre (or fraction thereof) so consumed, excluding any land which is then being used by the Godding Hollow Ditch Company. Compensation shall be paid to either party, their successors and assigns, whose property is so consumed. The amount of compensation shall be adjusted every three years by mutual written agreement by the record owners of all parcels so affected. If no agreement is made, the last previous amount of compensation shall be controlling.

6. USE OF RESERVOIR. The parties shall share equally in the rights, titles and interests to the water impounded by the reservoir. The parties may subdivide and convey fractional interests in their respective 50% interests as they may deem appropriate in conjunction with any subdivision of their respective parcels of property. The parties acknowledge and agree that the purpose of the reservoir is to protect the water supply and source for the respective parcels of land and to protect the present well known as Johnson Well No. 1 in the event augmentation is required. Accordingly, this agreement is subject to any conditions or terms which may be imposed by any adjudication, decree or permit allowing the

construction of the reservoir and the impounding of water.

7. COSTS. The parties agree to equally share all costs and expenses of obtaining the required adjudication, decree, permits, and other licenses and authorizations for constructing the reservoir. The costs and expenses of actual construction of the reservoir shall also be equally shared by the parties without respect to the \$10,000.00 limitation as previously agreed.

8. TIME OF CONSTRUCTION. The parties expressly acknowledge that the reservoir shall be constructed at such time as is required to protect the water source or supply of the Johnson Well No. 1 and/or other wells which may be drilled and operated by either party, or as is required to augment such water sources or supplies. However, the parties, by mutual written agreement, may construct the reservoir for non-water related purposes, such as aesthetic, recreational, etc. The parties agree and acknowledge that this agreement nor any previous agreements do not affirmatively obligate the parties to construct the reservoir unless said reservoir is required or needed to enhance or protect water rights, sources or supplies.

9. BINDING EFFECT. This agreement shall be recorded and shall constitute a covenant running with the land as well as an easement for the purposes stated herein, and shall be binding upon the parties, their successors, assigns, representatives, grantees and all those who may take title or interest in and to the respective properties affected by this agreement.

10. ATTORNEYS' FEES. If any party breaches this Agreement, the breaching party shall pay all of the nonbreaching party's reasonable attorneys' fees and costs in enforcing this Agreement whether or not legal proceedings are instituted.

11. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall remain in full force and effect.

12. GOVERNING LAW. This Agreement shall be governed by the laws of Colorado.

13. CAPTIONS. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope of intent of this Agreement.

B 1203 REC 02149527 07/27/88 12:43 \$184.00 4/006
F 2102 MARY ANN FEUERSTEIN CLERK & RECORDER WELD CO, CO

14. ARBITRATION. Any dispute arising under this Agreement which cannot be resolved by the parties shall be submitted to arbitration in Longmont, Colorado by a board of three persons, one chosen by each party and the third by the two persons previously chosen. The parties agree to abide by the decision of the three-person board. If either party fails to choose a representative within ten days after demand for arbitration, the decision of the person chosen by the other party shall govern. The prevailing party may file such award with the Clerk of the District Court of Weld County, who shall enter judgment thereon, and if such award requires the payment of money, execution shall issue on such judgment.

DATED: July 11, 1988.

James T. Westervelt, Jr.
James T. Westervelt, Jr.

HIGH COUNTRY TURF

By: [Signature]
General Partner

By: [Signature]
General Partner

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 11th day of July, 1988, by Harold Tassart and J.B. Telleu as general partners in High Country Trust

Witness my hand and official seal.

My commission expires: My Commission Expires July 9, 1992

Richard H. Lyons
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this 11th day of July, 1988, by James T. Westervelt, Jr.

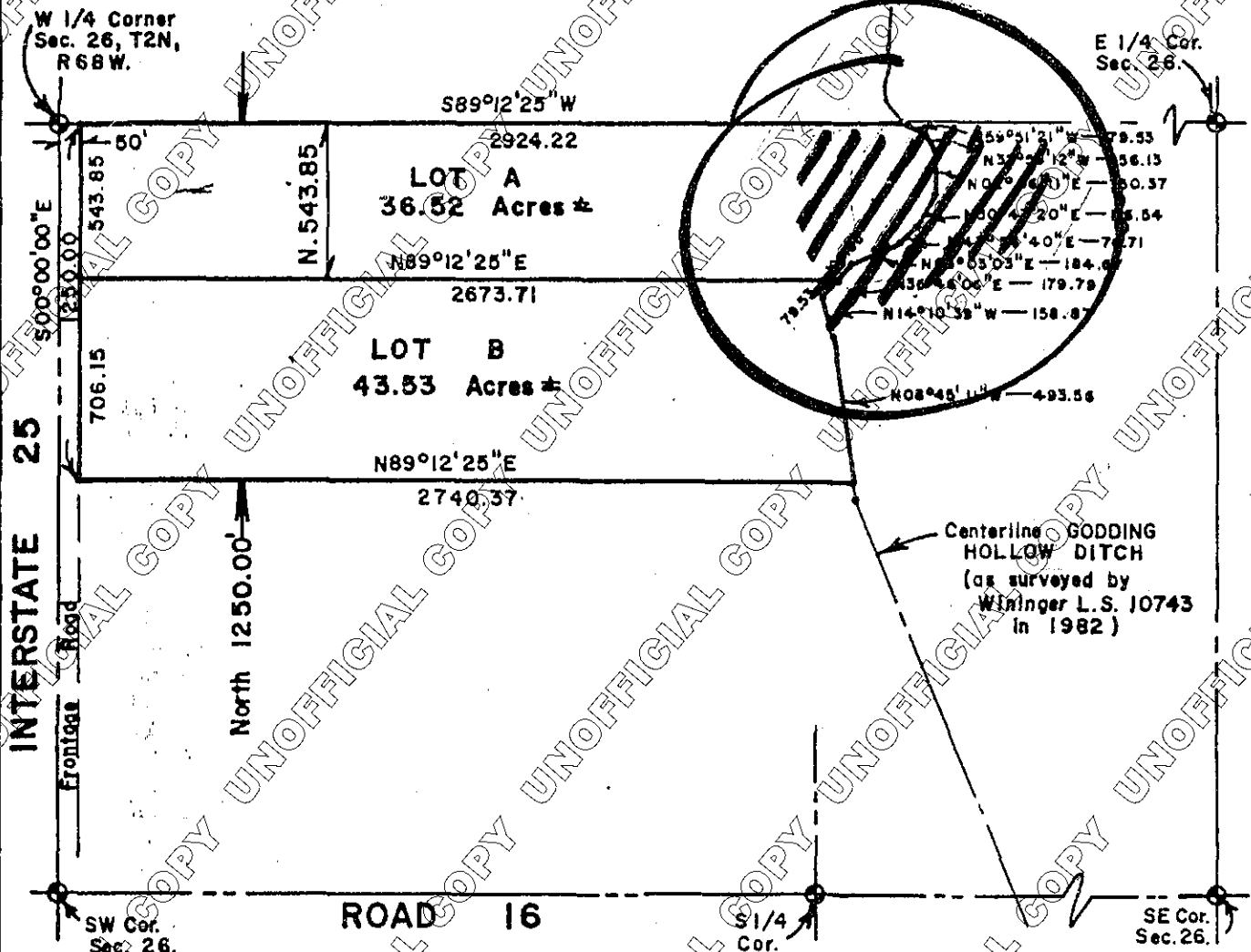
Witness my hand and official seal.

My commission expires: My Commission Expires July 9, 1992

Richard H. Lyons
Notary Public

RECORDED EXEMPTION NO. 1313-26-3-RE 865

(Part of the S 1/2 of Sec. 26, T2N, R68W of the 6th P.M.)



B 1203 REC 02149527 07/27/88 12:43 \$18.00 6/006
F 2104 MARY ANN FEUERSTEIN CLERK & RECORDER WELD CO, CO

SCALE:
1" = 600'



- Section Corner
- Property Corner

NOTE:
ALL BEARINGS SHOWN ARE
FROM THE SURVEY MADE BY
JESSE WININGER IN 1982.

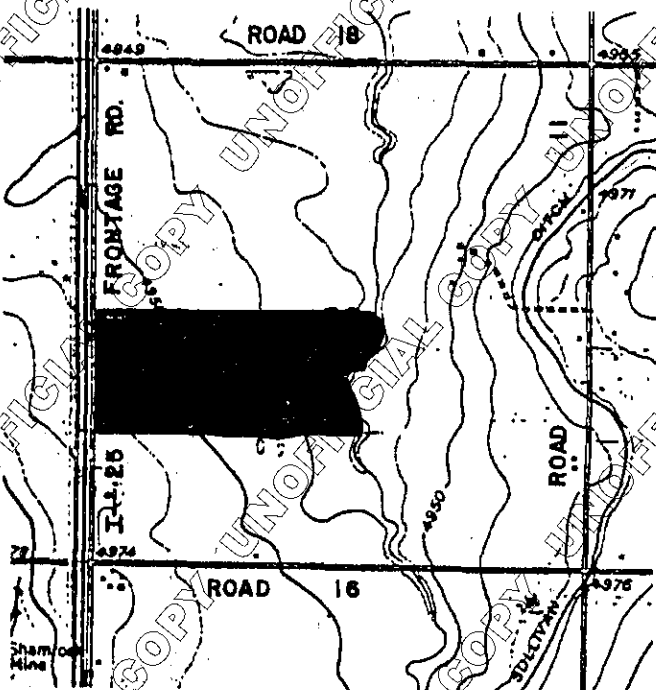
LOT A = 36.52 Ac. ±
LOT B = 43.53 Ac. ±
TOTAL = 80.05 Ac. ±

OWNER:

O.F.T., Inc.
John Butcher, Pres.
7440 I-25 Frontage Rd.
Erie, CO. 80516

PREPARED BY:

ALPHA ENGINEERING
P.O. BOX 392
FT. LUPTON, CO. 80621
PH. 303-857-2308
DATE: DEC. 29, 1987
FILE: 26-2N8-03



LOCATION MAP

SCALE: 1" = 2000'



SHEET 1 OF 2.

TERMINATION RESERVOIR RESERVATION

This Termination of Reservoir Reservation ("Termination") is made and entered into effective as of the ____ day of April 2022 (the "Effective Date") by and between Shadetree Eagle, LLC, a Colorado limited liability company ("Shadetree Eagle"), the Town of Frederick, CO ("Town") and Anadarko E & P Onshore, LLC, a Delaware limited liability company ("Anadarko"). Anadarko, the Town and Shadetree may be referred to individually as a "Party" and, collectively, as the "Parties".

RECITALS

A. Shadetree is the owner of the real property located in Weld County, CO described on Exhibit A hereto, which is incorporated here by this reference (the "Shadetree Property"). The Town is the owner of the real property described on Exhibit B hereto, which is incorporated here by this reference (the "Town Property"). Anadarko is the owner of the real property described on Exhibit C hereto, which is incorporated here by this reference (the "Anadarko Property"). The Shadetree Property, the Town Property and the Anadarko Property may be referred to, collectively, as the "Properties".

B. The Properties are burdened and benefited by a reservation of the right to build and operate a reservoir and establish an easement in connection therewith (the "Reservoir Reservation") as set forth in the following described documents: Right of Way Easement as granted in instrument recorded July 6, 1981 under Reception No. 1862471 in Book 940 and re-recorded November 25, 1981, under Reception No. 1875538 in Book 954 and Agreement recorded October 8, 1984 under Reception No. 1984275 in Book 1045 and Agreement recorded July 27, 1988 at reception No. 2149527 in Book 1203 in the real property records of Weld County, CO. The Properties are the only real property burdened and benefited by the Reservoir Reservation.

C. The reservoir and easement improvements described in the Reservoir Reservation have not been installed and the original parties to the Reservoir Reservation are deceased and defunct.

D. Shadetree, the Town and Anadarko have determined to terminate and vacate the Reservoir Reservation as set forth below.

TERMINATION OF RESERVATION

1. Termination of Reservation. NOW, THEREFORE, in consideration of the foregoing Recitals, by their execution below, Shadetree Eagle, the Town and Anadarko, as the owners of all the real property burdened and benefited by the Reservoir Reservation, hereby terminate and vacate the Reservoir Reservation in its entirety and declare it to be of no further force or effect. From and after the Effective Date, the Properties shall no longer be burdened or benefited by the Reservoir Reservation, and the reservoir improvements described therein shall not be constructed on the Properties or any of them.

2. Recording and Binding Effect. This Termination shall be recorded in the real property records of Weld County, CO at the expense of Shadetree Eagle, shall run with the land, and shall bind the Properties, the Parties hereto and their respective heirs, successors and assigns.

3. Other Acts and Documents. By their execution below, the Parties agree to execute such other documents and take such other acts as may be reasonably necessary to or convenient to implement and effect the termination of the Reservoir Reservation.

4. Authority. By their execution below, each Party represents to the other Party that the execution of this Termination has been duly authorized by the managers and members of each Party as required by the organizational documents thereof, and the signatory below has actual and apparent authority to bind the Party by his/her signature.

5. Attorney's Fees and Costs of Enforcement in the Event of Litigation. In the event of any litigation between the Parties concerning this Termination, the court shall award the substantially prevailing Party their costs and reasonable attorney's fees incurred in said litigation.

IN WITNESS WHEREOF, the Parties have executed this Termination of Reservoir Reservation intending to be legally bound.

Shadetree Eagle, LLC,
a Colorado limited liability company

By: _____
Curtis McDonald, Manager

STATE OF _____)
) SS.
_____ COUNTY)

Acknowledged before me this ____ day of _____, 2022 by Curtis McDonald as
Manager of Shadetree Eagle, LLC.

Notary Public

My Commission Expires: _____

Town of Frederick, CO

By: _____
Bryan Ostler, Town Manager,
pursuant to Resolution No. _____

Attest: _____
Meghan Martinez, Town Clerk

STATE OF COLORADO)
) SS.
_____ COUNTY)

Acknowledged before me this ____ day of _____, 2022 by Bryan Ostler as Manager
and Meghan Martinez as Town Clerk of the Town of Frederick, CO.

Notary Public

My Commission Expires: _____

Anadarko E & P Onshore, LLC,
a Delaware limited liability company

By: _____
_____, Manager

STATE OF _____)
_____) SS.
_____ COUNTY)

Acknowledged before me this ____ day of _____, 2022 by _____ as Manager
of Anadarko E & P Onshore, LLC.

Notary Public

My Commission Expires: _____

EXHIBIT A

Shadetree Property

EXHIBIT B

Town Property

EXHIBIT C

Anadarko Property

MILLER DR



**Property
Owners**



FREDERICK



ANADARKO



DEVELOPER

0 40 80 160 240 Feet



EAGLE BLVD

EAGLE BLVD

CARBIDE ST

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 22-R-35**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO
AUTHORIZING THE TERMINATION OF A RESERVOIR
RESERVATION EASEMENT**

WHEREAS, the Town of Frederick, Colorado recently became aware of an easement reservation dedication for a potential reservoir project that was considered by property owners along the Godding Hollow between 1981 and 1988; and,

WHEREAS, the area surrounding the property has since developed in contradiction and conflict with a potential reservoir project; and,

WHEREAS, current land use and water planning do not identify this area as appropriate for the development of a reservoir; and,

WHEREAS, the remaining properties within the Eagle Business Park would be well served by the termination of this easement reservation; and,

WHEREAS, current property owners that are impacted by the reservoir easement reservation, Shadetree Eagle, the Town of Frederick, and Anadarko E & P Onshore, LLC desire to terminate the reservation; and,

WHEREAS, the Town is still in the process of investigating if there are any viable water rights associated with the reservoir easement reservation that would obfuscate the termination of the easement; and,

WHEREAS, potential purchasers of property within the Eagle Business Park area need this matter resolved before finalizing any property transactions.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Frederick, Colorado:

- 1) The Town staff is directed to complete due diligence investigation into the viability of potential water rights associated with this reservoir easement reservation.
- 2) The attached TERMINATION RESERVOIR RESERVATION, attached hereto as Exhibit A is approved as to form pending the determination of water rights.
- 3) The Town Manager is authorized to sign the TERMINATION RESERVOIR RESERVATION upon determination that there are no outstanding water rights associated with the reservoir easement.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 12th DAY OF APRIL, 2022.

ATTEST:

By _____
Meghan C. Martinez, MMC, Town Clerk

TOWN OF FREDERICK

By _____
Tracie Crites, Mayor



TOWN OF FREDERICK

Board of Trustees

Action Memorandum

Dan March, Mayor Pro Tem
Mark Lamach, Trustee
Adam Mahan, Trustee

Tracie Crites, Mayor

Rusty O'Neal, Trustee
Kevin Brown, Trustee
Windi Padia, Trustee

Conducting RFP on Town Audit Services for the 2022 Fiscal Year

Agenda Date: Town Board Meeting - April 12, 2022

Attachments: a. Ordinance 1375

Finance Review: _____
Administrative Services Officer

Submitted by: _____
Administrative Services Officer

Approved for Presentation: _____
Town Manager

☐ Quasi-Judicial

☐ Legislative

☒ Administrative

Strategic Plan Alignment:

The 2021-2022 strategic plan has six goals that drive forward the mission and vision of the Town. This ordinance is aligned with the following strategic goal.

- Fiscally Responsible Governance – This request plans for, identifies, and utilizes resources that reflect exemplary stewardship for those who live in Frederick and those who see out Frederick in the future.

Summary Statement:

This item is to direct staff to complete the Request for Proposal (RFP) process for Town Audit Services for the 2022 fiscal year.

Detail of Issue/Request:

The current financial policies were adopted by the Board of Trustees on January 2018. Section 11a. state that Accountants/Auditors are exempt from a routine RFP process. "This purchasing policy shall

Built on What Matters.

not apply to professional services and the requirements shall not be mandatory in the employment of professional services. Professional services include, but are not limited to the following: Attorneys, Bond Counsel, Certified Public Accountants/Auditors, Consultants, Engineers, Financial Advisors, Physicians and Real Estate Brokers.”

The last formal RFP for auditors was in November 2010. Since 2011 the Town has retained the same audit firm, John Cutler and Associates. A motion was made by a board of trustee on February 22, 2022 to have staff conduct a RFP for the Town’s audit services on the 2022 financial audit. It was also motioned to have this RFP conducted every 4-5 years and have that included in the verbiage of future financial policy updates. The motion had a second and passed by the board 6-0.

Having audit services reviewed and a RFP issued routinely can help protect the fiscal responsibility of the Town’s assets and internal controls.

Legal Comments:

Item has been reviewed and drafted by legal counsel.

Alternatives/Options:

Option would be to not approve and retain the current audit firm on hand without going through the formal request for proposal process.

Financial Considerations:

Not Applicable

Staff Recommendation:

Recommendation is to approve as presented.

ORDINANCE NO. 1375

**AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO, DIRECTING
TOWN STAFF TO SEEK REQUESTS FOR PROPOSALS FOR AUDITING
SERVICES FOR THE 2022 FISCAL YEAR.**

WHEREAS, the Town of Frederick is required by the Colorado Revised Statutes § 29-1-601 et seq. to perform an annual independent audit of the financial statements for each fiscal year; and,

WHEREAS, the Town of Frederick last issued a formal Request For Proposals (“RFP”) for auditing services in November 2010; and,

WHEREAS, the current Town of Frederick financial policy, adopted in 2018, specifically exempts certified public accountants/auditors from the requirements of the purchasing policy that calls for issuing RFPs for Town projects and/or contract services; and,

WHEREAS, the Town staff is in the process of creating updated procurement policies to align Town practices with industry standard and best practices; and

WHEREAS, the Town Board directed staff via a motion on February 22, 2022 to conduct an RFP process for auditing services for the 2022 fiscal year audit and to incorporate a requirement for conducting an RFP process for auditing services every 4-5 years within the updated procurement policies of the Town.

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

Section 1. Town staff is directed to solicit bids through an RFP process for the 2022 financial audit.

Section 2. Town staff is directed to incorporate the requirement for conducting an RFP for auditing services every 4-5 years in the forthcoming update to the Town’s procurement policies.

Section 3. Severance Clause. If an article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees of the Town of Frederick, Colorado hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 4. Repeal. All other ordinances, or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

Section 5. Effective Date. This ordinance shall take effect on April 12, 2022.

**INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED IN FULL BY
THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK THIS 12TH DAY OF
APRIL, 2022**

TOWN OF FREDERICK, a Colorado municipal
corporation

By: _____
Tracie Crites, Mayor

ATTEST:

By: _____
Meghan Martinez, MMC, Town Clerk