BOARD OF TRUSTEES
October 13, 2020
5:15 PM

Regular Meeting

(Please note the Board of Trustees will be in executive session from 5:15 p.m. - 6:30 p.m.)

Please click the link below to join the webinar:
https://zoom.us/j/94860964034?pwd=czlsL01YZ1AwcVpCWFNIRk0yQ0xmUT09
Passcode: 447132
Webinar ID: 948 6096 4034
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US: +13462487799,,94860964034# or +16699009128,,94860964034#
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US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782

A. CALL TO ORDER

1. Roll Call

B. EXECUTIVE SESSION

1. Pursuant to CRS 24-6-402(4), the town board may enter executive session for the purposes of determining positions as to matters subject to negotiations. relative to selection of finalists for the position of town administrator (but not to address negotiations with any specific applicant), and/or to discuss personnel matters and discuss and receive information related to applicants to fill the position of town administrator, as to applicants who are not current town employees, as allowed by CRS 24-6-402(4)(e) and (f).

   Please note the Board of Trustees will be in executive session from 5:15 p.m. - 6:30 p.m.

C. ITEMS

1. Pledge of Allegiance
2. Amendments to Agenda
3. Conflict of Interest

D. COMMUNITY PARTICIPATION

1. Public Comment -

E. CONSENT AGENDA

1. Minutes of the Board of Trustees Meetings for June 9, 2020, August 12, 2020 and August 25, 2020.

F. ACTION ITEMS

1. Clarifier Rehab Construction Contract

    - Staff presentation: Dave Myer, Engineer II

2. Water Treatment Plant Expansion CMAR Contract Amendment

    - Staff Presentation: Dave Myer, Engineer II

3. Space Needs Discussion

    - Staff presentation: Kelly Houghteling, Interim Town Administrator

4. Resolution 37- 2020 : A Resolution Granting the Town Administrator the Authority to Purchase Water Shares

    - Staff presentation: Kelly Houghteling, Interim Town Administrator

5. Annexation Agreement and Development Agreement for Poudre School District Subdivision

    - Staff presentation: Cody Bird, Planning Director

6. Resolution 36-2020: A Resolution Finding Substantial Compliance for Annexation of Property into the Town of Wellington and Establishing a Public Hearing

    - Staff presentation: Cody Bird, Planning Director

7. Proposed Ordinance - An Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

    - Staff presentation: Brad March, Town Attorney

8. Proposed Ordinance - An Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado

    - Staff presentation: Brad March, Town Attorney

9. Resolution No. 30-2020 - A Resolution Calling a Special Election in the Town of Wellington, Colorado

    - Staff presentation: Brad March, Town Attorney

10. Resolution No. 31-2020 - A Resolution Authorizing the Town Clerk to Appoint Election Judges for the Special Election

- Staff presentation: Brad March, Town Attorney

11. Resolution No. 36-2020 - A Resolution Referring a Ballot Question

    - Staff presentation: Brad March, Town Attorney

G. REPORTS

1. Town Attorney

    a. Citizen Initiative Update

2. Town Administrator

3. Staff Communications

    a. Larimer County Sheriff's Office Report - August 2020

4. Board

H. ADJOURN

The Town of Wellington will make reasonable accommodations for access to Town services, programs, and activities and special communication arrangements Individuals needing special accommodation may request assistance by contacting at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.

Board of Trustees Meeting

Date: October 13, 2020
Submitted By:
Subject: Minutes of the Board of Trustees Meetings for June 9, 2020, August 12, 2020 and August 25, 2020.

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. June 9, 2020 Draft Minutes
2. August 12, 2020 Draft Minutes
3. August 25, 2020 Draft Minutes

TOWN OF WELLINGTON

BOARD OF TRUSTEES – REGULAR MEETING
June 9, 2020
Regular Meeting

MINUTES

A. **CALL TO ORDER**

Mayor Hammon called the regular meeting of the Board of Trustees to order at 6:30 p.m.

1. Pledge of Allegiance
Mayor Hammon asked that all rise for the pledge of allegiance.

2. Roll Call
Mayor Troy Hammon
Trustee Jon Gaiter
Trustee John Jerome
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

Trustee Wyatt Knutson - ABSENT

Also Present:
Kelly Houghteling, Interim Town Administrator
Tyler Sexton, Interim Finance Director
Cody Bird, Director of Planning
Bob Gowing, Director of Public Works
Krystal Eucker, Town Clerk

3. Amendments to Agenda
Mayor Hammon asked if there were any amendments to the agenda to which there was none.

4. Conflict of Interest
Mayor Hammon asked if there were any conflicts of interest on this evening's agenda to which there was none.

B. **COMMUNITY PARTICIPATION**

1. Public Comment
Kristi Cannon, 6886 Mead Street, Wellington, CO commented that in the spirit of Board transparency of Board of Trustee meetings along with holding individual Board of Trustee Members to a higher level of individual accountability for future voting decisions, I, on behalf of

others in the community would like to see the posted minutes show how the Trustees individually voted during the meeting with yes or no votes. This seems to be the practice in other communities and would like to know why this has not been done.

Mr. Hammon commented that this is something that has not been brought up in the past.

Mr. March stated this is a carry over from past minutes preparation.

Melissa Whitehouse, 3922 Grant, Wellington, CO commented that she agreed with Ms. Cannon.

Bryan Ehrlich, 2151 Bee Lake Road, Wellington, CO commented that he will speak regarding items number 7, the item related to fireworks.

2. <u>Presentation</u>

a. SAFEBuilt Presentation
Guest Speaker: Caleb Sulzen, SAFEbuilt Building Official

Mr. Sulzen informed the Board that he will be doing a recap of what SAFEBuilt does and what their role is. SAFEBuilt operates as the Town's building department by completing plan reviews and inspections. If questions arise that are code and building related, they can be forwarded to SAFEBuilt.

Numbers for 2019 include:

- 15 new home building permits issued – Up from 101 permits in 2018
- 25 home alteration permits
- 73 new commercial permits
- 17 commercial renovations.

SAFEBuilt does waive some fees for charitable projects, in 2019, there was over $29,000 waived in fees on building permits.

Due to the COVID pandemic, SAFEBuilt has been able to do electronic submittals and plan reviews. Instead of individuals having to bring in documents to the office, it can all be done electronically. This process has also reduced the time it takes for plan reviews and building permit issuance.

Mayor Hammon inquired if the 73 new commercial permits equated to new businesses.

Mr. Sulzen stated commercial structure is anything that does not fall under a single-family residential structure so some of those are multi-family dwellings that fall under the commercial permits. The 73 new commercial permits were not all businesses but it is estimated about 1/3 of the permits were new businesses.

Trustee Kinney thanked Mr. Sulzen for all that they have done for the community.

C. CONSENT AGENDA

1. Board of Trustee Minutes from May 12, 2020
Trustee Kinney moved approve the consent agenda; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:
Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays - None
Motion carried.

D. ACTION ITEMS

1. Funding Request - Eagles After Hours
Ms. Brucher, Eagles After Hours Coordinator thanked the Wellington Town Board for their support of the Eagles After Hours Program for the Spring 2019 and fall 2020 school year. There were 550 students at Wellington Middle School and of those students, 3,670 (duplicated – students attend twice a week) participated in the Eagles After Hours program.

There were 54 days of programming for the 2020-2021 school year. The programming included Homework Help, Math Tutoring, Ecology Club, Science Olympiad, Yoga, Weightlifting, Sports and Games, MASH (Music After School Help), Chess Club, "Kindness Club", English/Writing Club, Computer Lab and Community Arts. We service Special Education, Highly at Risk and McKinney Students (who are our homeless students). Our program services 100% of our student population. We know that with the volume of incoming students next school year, we will be serving even more students. We are requesting funding of $5000.00 for our (Fall 2020 – Spring 2021) school year.

Mayor Hammon confirmed that Ms. Brucher is asking for a funding request from the Board.
Per Mr. Brucher; yes.

Mayor Hammon opened the meeting up for public comment.

Erin Jerome, 3712 Wine Cup Street, Wellington CO commented that she would like to see funding for this program continue.

Trustee Jerome moved to approve the $5,000 funding request for Eagles After Hours; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:
Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays - None
Motion carried.

2. Appointment to Planning Commission
On May 26, 2020, the Board of Trustees adopted Resolution No. 17-2020 appointing positions to various boards and commissions. At the time the resolution was adopted, there were applications for the vacant seat on the Planning Commission, but the applications had not yet been reviewed.

The Planning Commission conducted interviews with Dan Sattler and Linda Knaack at the June 1, 2020 Planning Commission meeting. Following interviews and discussion, the Planning Commission did not reach consensus on just one applicant to recommend for the appointment. Therefore, the Planning Commission forwarded a recommendation that the Board of Trustees interview both candidates.

Mr. Gaiter asked the following questions of the candidates.

1. What place do you see not for profits in the Town of Wellington and how will that impact decisions on the Planning Commission.

    Mr. Sattler stated there is room in every community for non-profits although he would look at all the evidence that is provided from the applicant, staff and from public comments and would make a decision based on that information. Personal preferences are not taken into consideration for those decisions. Decisions will be made based on what would be the best for the Town. The comprehensive plan steering committee that he is currently on is a great opportunity to update the land use codes for clarification of the types of businesses and entities. Mr. Sattler believes that highway commercial needs to be preserved and commercial property as a whole needs to be preserved. There are some good opportunities in Town and those opportunities need to be evaluated. Non-profits could be evaluated to find a good fit in Wellington that would benefit them. The ultimate decision comes back to the Board of Trustees.

    Ms. Knaack stated she can't really answer that because it doesn't seem like there is a designated place for them at this time, especially for the churches. Ms. Knaack stated she is excited to be on the steering committed to help with some of the zoning issues. Ms. Knaack does not feel it is a bad thing for the community to have churches and non-profits.
2. What role will the prospective of the public and public comments play in decisions on the Planning Commission?

    Mr. Sattler stated public comment will play a big role as it provides a lot of evidence to what decisions are. We listen to the public and take into consideration what they say as there are times that they bring up issues that have not been considered and it is good to have that dialogue. Sometimes when in a leadership position, tough decisions need to be made and those may go against some of the members of the public. As far as the whole town is concerned, it may be a better decision to go against the few members of the public that may have the loudest voice.

    Ms. Knaack stated it is very important that we listen to the public and some need to take blinders off and start listening. Ms. Knaack has been handing out postcards for the comprehensive plan at her business to get opinions of the public.
3. What ways are you involved to have an understanding on what the community wants to see in Wellington?

    Mr. Sattler stated he is a small business owner, so he talks with other business owners in town and citizens. Since he was a past Trustee, he is asked his opinions and gathers their opinions. Mr. Sattler encourages them to get on the Town's website to engage in some of the community outreach. While on the comprehensive plan steering committee, they are asking the community what is important to them on an ongoing basis.

    Ms. Knaack stated she is involved in the community as she was born and raised here. Ms. Knaack is out and about a lot and does have a strong connection with the faith community.

Trustee Kinney asked about what they see as being the biggest challenges of the Planning Commission and where do you see Wellington in 20 years.

Mr. Sattler stated the biggest challenge for the Planning Commission is dealing with the zoning and use codes that are in place today and trying to make those work. Mr. Sattler stated he feels the population will be around 20,000-30,000 and will have restaurants, taverns, bowling alley, movie theater and other stuff to keep the citizens in town for their entertainment. Mr. Sattler could see downtown with 2-story buildings that look like a typical downtown.

Ms. Knaack stated the challenges are commercial growth and zoning. Ms. Knaack has done more research on the zoning map and was surprised to see it was more detrimental than originally though; where are places going to go. In 20 years, her hope is laughter, conversation, family and bringing people together; that is the feeling I want for this community.

Trustee Jerome asked what role do you think the Planning Commission should play as it pertains to the Town's water issues and what requirements should be for developments.

Ms. Knaack stated there is a lot of pieces with the Planning Commission of bringing in code enforcement and looking at the code and how we are following those codes. Water is important for everyone to discuss although the Board has put a lot of energy and effort into the water issues. It is an area that she has not done a lot of research on although if there is a residential area coming to Wellington, we need to be assured that there is some available water.

Mr. Sattler stated it is something that needs discussed although it is not the role of the Planning Commission to make policies, as that is the role of the Board of Trustees. The Planning Commission cannot just continue with cash-in-lieu because the water shares need to be found.

Trustee Macdonald asked what the role of the Planning Commission is and what would your position be on lifting the moratorium on marijuana.

Ms. Knaack stated the role of the Planning Commission is really about code enforcement and bringing in code. The Planning Commission does bring recommendations to the Board of Trustees. Ms. Knaack stated she would not be comfortable with lifting the moratorium on marijuana but would need to know more information before making a decision.

Mr. Sattler stated the role of the Planning Commission is to look at the codes and to make sure the project that is presented fits within those codes. The Planning Commission is not really code enforcement. The most important role is the quasi-judicial role that when all the information is presented to the Planning Commission, we have to act similar to the way the judge would act. After reviewing all the information and listening to both sides, then a decision could be made. Mr. Sattler stated he would discourage lifting the moratorium on marijuana.

Mayor Hammon asked how they feel about other items related to marijuana that are allowed in the code.

Mr. Settler stated as an example, if CBD oil is presented and the applicant is bringing in everything needed for that project, then my personal opinion does not matter. We must base decisions on what the code says and not personal views.

Ms. Knaack stated it if it is within code, we would have to move forward. I do think there is a public safety factor as well to make sure the citizens are safe.

Mr. Sattler stated he feels that in the position of a Planning Commissioner, experience means a lot. Experience is a big contributor with water issues and zoning issues.

Ms. Knaack stated she feels that she has a lot to bring to the table being that she is native of Wellington and has watched the town grow and, in some ways, not healthy growth. Ms. Knaack feels that her diverse background would be a big contributor to the Planning Commission.

Mayor Hammon opened the meeting up for public comment.

Melissa Whitehouse, 3922 Grant, Wellington, CO stated this town is still paying for a lot of the issues that come about by not being able to read a site plan. Ms. Whitehouse commented that she has seen it in the past on the Planning Commission that the Commissioners themselves may or may not have the ability to read the site plans and the question that she has for both of the candidates is if they feel comfortable reading a site plan.

Ms. Knaack stated she has worked in the construction industry for 13 years and has the ability to read a site plan.

Mr. Sattler stated he can read a site plan although it is not his expertise. There are individuals on the Planning Commission right now that can read site plans.

Trustee Jerome moved to nominate Dan Sattler to the Planning Commission; Trustee Macdonald seconded the motion. Roll call on the vote resulted as follows:

Yeas – Jerome, Macdonald
Nays – Gaiter, Kinney, Whitehouse, Hammon
Motion failed.

Trustee Gaiter moved to nominate Linda Knaack to the Planning Commission; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Kinney, Whitehouse, Hammon
Nays – Jerome, Macdonald
Motion carried.

Trustee Kinney moved to approve Resolution 21-2020 designating Linda Knaack as the Planning Commission appointee; Trustee Whitehouse seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

3. <u>Annexation Agreement for Poudre School District Annexation</u>

Mr. Bird stated The Town Board was presented with a draft annexation agreement and it was subsequently tabled to the June 9, 2020 meeting to allow coordination between Town staff and PSD staff. Town staff is recommending that the annexation agreement and a development agreement be approved concurrently. Details of the development agreement are still forthcoming, some of which are dependent upon additional analysis and plan review. Town staff recommends this item be tabled while both the annexation agreement and development agreement are being prepared

Trustee Whitehouse moved to table the PSD Annexation and Development Agreement with the

Poudre School District to June 23, 2020; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

4. Resolution 19-2020 — Plan of Administrative Organization
Ms. Houghteling informed the Board that the Town Administrator shall propose a plan of administrative organization to the Board of Trustees within ninety (90) days after his or her appointment, which, if approved by the Board of Trustees, shall be adopted by resolution. The administrative plan shall provide for such departments and employees as may be deemed necessary for the efficient administration of the Town. All such employees shall be appointed by the Town Administrator/Clerk with approval of the Board of Trustees. Although serving in an Interim capacity, the organizational chart must be approved by the Board of Trustees.

Trustee Macdonald inquired as to the plan for a communication specialist or public information officer.

Ms. Houghteling stated that is something that staff has been discussing for 2021 staffing needs and it is a high priority issue.

Mayor Hammon opened the meeting up for public comment to which there was none.

Trustee Jerome moved to approve Resolution 19-2020; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

5. Resolution 20-2020: Watering Restrictions
Mr. Gowing stated Wellington has seen the highest record or water usage this year with 41 million gallons used; that is a 42% increase over 2019. Outside watering is a significant part of the water demand and potable water for outdoor use is something that needs to be managed better. The water treatment plant was running at capacity last week. The microfiltration plant has not been turned on yet as the microfiltration plant does not address taste and odor. When the microfiltration plant runs in the summer, we can expect a slight elevation in taste and odor. The bulk water dispenser is in need of repair and the part has been ordered.

Trustee Whitehouse inquired if the Wilson Wells were part of the equation.

Mr. Gowing stated the Wilson Wells and Nano were turned on at the end of last month.

Trustee Kinney commented that public education will be needed to roll out water restrictions.

Mayor Hammon inquired if the plant is keeping up with demand.

Mr. Gowing stated we are keeping up with demand although June, July and August could be the problem months as there has been more water usage than normal.

Mayor Hammon inquired if there will be warnings issued that violate the water restrictions before fines are imposed.

Mr. Gowing stated a group of staff have come together to develop a "policy" that includes warnings and a stepped-up fine program.

Mayor Hammon inquired as to how the fines were determined.

Mr. March stated they were discussed at a staff level.

Trustee Kinney commented that she does not feel comfortable to make this effective immediately.

Mr. March stated the intention is there will be a hang tag that consists of a warning. If there is not immediate attention, the water usage could increase in the next few weeks.

Mr. Gowing stated having the resolution in place is part of the education piece.

Trustee Gaiter inquired as to the maximum production without turning on the microfiltration.

Mr. Gowing stated the convention plant can run safely to 2.2 million gallons per day. The nano produces about .5 million gallons per day, the microfiltration produces about .3 million gallons per day and the RO is about .1 million gallons per day. The balance between these systems and running these plants closer to maximum, there is a higher risk of breakdowns.

Trustee Gaiter inquired as to one section of the resolution that mentions keeping runoff to an insignificant amount and that seems to be vague; is there a way to quantify that.

Mr. March stated that was debatable when developing the resolution; although that would seem to be a serious amount of water that the code enforcement officer can make the call on.

Mr. Bird commented that as the supervisor for the code enforcement officer, it is the intention to be educational and informative and showing leniency versus a punishment. There does need to be a measure in place to enforce when appropriate.

Mayor Hammon commented that there needs to be proper notice to the residents of Wellington.

Mayor Hammon opened the meeting up for public comment.

Jason Meadows, 18445 Bandana Lane, Wellington, CO commented that the bulk water station is the only source of water for some residents north of Wellington. Once that station was shut down, many residents have been left with no way of getting water other than traveling to Fort Collins. Is there a way to secure the water station for residents rather than oil and construction companies?

Mr. Gowing stated the bulk water dispenser fails on a regular basis and has recently failed again. There is a part on order to fix the station. The Town has looked into a card reader versus the bill and coin system that is currently in place and that is a substantial investment. It may be difficult to differentiate between residents as they should have a water tap and construction companies.

Kimberly Vandress, 9038 Plainsmen Drive, Wellington, CO has concerns about the amount of water used at the splash pad. Last summer, due to a broken part, the water ran all day long regardless if there were people there or not.

Christine Gaiter, 8132 4th Street, Wellington, CO commented that she would like to see reduced hours for the splash pad when it does open.

Shirrell Tietz, 4525 Ingalls Drive, Wellington, CO commented that she would like to know how usage will be looked at, if it will be water bill usage or visual usage.

Mr. Gowing stated it will be based on visual usage.

Melissa Whitehouse, 3922 Grant Avenue, Wellington, CO commented that in the last few months of water bills, this is the first time in years there is an estimated usage instead of actual reads. This makes it difficult to self-monitor their usage.

Mr. Gowing stated there was a couple months of estimates as there were some folks that were quarantined which included the meter reader.

Kent Allen, 68630 McClellan Road, Wellington, CO inquired if there are plans to temporarily hold off on new buildings to not increase the use issue.

Mayor Hammon stated Wellington is not holding off on any new development but we are not allowing construction workers fill up.

Cynthia Sullivan, 4173 Hayes Circle, Wellington, CO commented that section 3 has a limit of 2 days but in another section, it varies limiting outdoor watering.

Mr. March stated there was a revision to section 3 and that limitation to outdoor watering was clarified so that when it was intended to apply to non-utility users.

Trustee Jerome moved to approve Resolution 20-2020 with the adjustments to section 3 and if a warning is required it will be a posted warning; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

6. Wellington Senior Resources, Inc - Town of Wellington Contract Renewal

Ms. Woodruff informed the Board that Wellington Senior Resources, Inc., (WSR) has a historical relationship with the Town. Part of their charter, in connection with Larimer County Office on Aging Funding (LCOA) is to provide transportation to medical appointments for Wellington Seniors. Transportation is provided via the Senior Van which belongs to the WSR. The Town's has historically provided fuel, maintenance and vehicle insurance for the Senior Van, and Leeper Center use for various activities through this annual contract.

Items that have been modified in the contract include:

1. Align Town and WSR contract renewal dates with Larimer County Office on Aging Funding renewal with WSR (July 1-June 30).
2. Remove the $2000 capital contribution listed on previous contracts. This item has no known definition or use. It has been a "placeholder" for years according the current Director for WSR and she is unaware of its purpose.
3. Clean up some of the language of the previous contract such as - emptying of ashtrays, cleaning of carpets. No smoking is allowed in the building and there is no carpet in the areas that the Seniors use.

Mayor Hammon opened the meeting up for public comment to which there was none.

Trustee Gaiter moved to approve the Wellington Senior Resources Contract; Trustee Whitehouse seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

7. 4th of July Decision

Mayor Hammon stated the Town has decided to not have the 4th of July parade or the video to avoid social gatherings. The fireworks display is still available to the Town so the discussion this evening will be to decide if the fireworks should or should not happen. Mayor Hammon commented that he sees no reason not to move forward with the fireworks until something changes.

Trustee Gaiter commented that Larimer County was exploring watching fireworks from vehicles at The Ranch.

Trustee Whitehouse commented that he understands that Fort Collins has cancelled their fireworks show and does have concerns that the Town is sponsoring a gathering event.

Trustee Jerome commented that the Town should move forward with the fireworks.

Trustee Macdonald stated she would echo Trustee Jerome's statement.

Sergeant Rairdon commented that Fort Collins, Estes Park and Red Feather Lakes have cancelled their shows according to 9 News. The towns of Wellington, Loveland, Windsor, Greeley, Cheyenne and Timnath are planning to move forward with the fireworks display. In the past Wellington has seen people in town from Fort Collins so it is predicted that we will see Fort Collins residents this year as well. A plan for traffic control can be worked out with C-DOT and the State Patrol.

Bryan Ehrlich, 2151 Bee Lake Road, Wellington, CO commented that the fireworks display in Wellington is starting to get pretty well renowned; its more than a fireworks display, it is a message of patriotism. The message is also supported by the video and music. When the fireworks show is seen over trees it will not have as much of an impact without the video and choregraphed music. I would ask that the decision to cancel the video be delayed for a bit. This will be the perfect opportunity to test social distancing. If the COVID-19 virus slows and towns are able to have events, it would be better to have the video and be prepared than not have it.

Mayor Hammon confirmed that it is a $1,350 risk to do the video that may not be able to be displayed.

Mr. Ehrlich stated that is correct.

Mayor Hammon commented that the Board needs to decide to move forward or not with the fireworks and the video; if the video doesn't work than that is a minimal loss of $1,350.

Trustee Kinney commented that she is in favor of fireworks but not the video.

Trustee Gaiter commented that at this time, he would like to say no to the video.

Trustee Jerome commented that he is in for both.

Mayor Hammon opened the meeting for public comment.

Rudy Vandress is concerned that other areas have cancelled fireworks and is also concerned about individuals flooding into Wellington.

Travis Stevens, 3812 Hamilton Avenue, Wellington, CO commented that he is in favor of fireworks because individuals can see them from their homes.

Shirrell Tietz, 4525 Ingalls Drive, Wellington, CO inquired if there was a way to make an announcement, so Channel 9 News has corrected information.

Trustee Macdonald moved to move forward with the 4th of July fireworks; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

> **Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon**
> **Nays – None**
> **Motion carried.**

8. Tables & Chairs Funding Discussion

Ms. Houghteling informed the Board that at previous Board of Trustees meeting, the group discussed potentially purchasing tables and chairs to support businesses looking to expand their outdoor footprint to increase their seating capacity. C-DOT is working on a right-of-way process permit as the Town will need to submit an application to use the sidewalk if any of the businesses are along Cleveland Avenue.

Trustee Whitehouse inquired as to the lead time on the items.

> Ms. Houghteling stated it really depends on how much we are willing to pay for shipping.

Trustee Jerome inquired if C-DOT is willing to allow businesses to use the sidewalks.

> Ms. Houghteling stated they have issued draft guidelines at this point but nothing is formalized.

Mayor Hammon opened the meeting up for public comment.

Erin Jerome 3712 Wine Cup Street, Wellington, CO commented that she is so grateful that so many of you have made it your mission to support our many small businesses. With that being said, I am the owner of Trim Salon, located on Cleveland Ave, & I know that I speak for not only myself when I say that some of us are struggling daily to meet all of the new regulations, set forth by the county (Masks, social distancing, limited capacity). My reason for this comment is to make you all aware that we rely on you all to help set the precedence for following these guidelines, especially while you're venturing back into businesses as they reopen. I know that my business could really benefit from FULL support from you all. Thank you!

Melissa Whitehouse, 3922 Grant Avenue, Wellington, CO stated if we assume 4 table sets for each of the 5 restaurants under consideration, those 20 sets would be under 5k.

Kallie Cooper, 6852 Hayfield Street, commented that if Wellington does move forward with purchasing these tables, that there would be consideration of the Main Streets design team to review them.

Trustee Gaiter authorizing $10,000 for tables and chairs for local businesses; Trustee Jerome seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

9. Ordinance 12-2020: Modifying Special Event Liquor Licensing
Mr. March informed the Board that the State Liquor Code was moved last year a different title. This ordinance is referencing the correct section for special event liquor licensing.

Mayor Hammon opened the meeting up for public comment to which there was none.

Trustee Whitehouse moved to approve Ordinance 12-2020; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

Mayor Hammon closed the regular meeting at 9:49 p.m. and opened the Liquor License Review Board

E. OTHER BOARDS

Roll Call
Mayor Troy Hammon
Trustee Jon Gaiter
Trustee John Jerome
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

Trustee Wyatt Knutson - ABSENT

1. **Liquor License Review Board**
Wellington Grill Renewal
Mr. March stated this agenda item needs to be tabled to the next meeting.

Trustee Macdonald moved to table the Wellington Grill renewal to June 23, 2020; Trustee Jerome seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Hammon
Nays – None
Motion carried.

Mayor Hammon closed the Liquor License Review Board and resumed the regular meeting at 9:50

p.m.

F. REPORTS

1. Town Attorney
   None.
2. Town Administrator

   a. COVID-19 Update
      Ms. Houghteling informed the Board that the Town Hall public hours are from 9:00 a.m. to 3:00 p.m., the Annex is by appointment, Municipal Court has resumed, the Library is doing curbside pickups and by appointment, recreation is still in the works, the Senior Center is closed but the senior van is still operating. The dog park is open along with playgrounds, basketball courts, all fields, disc golf and tennis courts. The skate park is closed for repair and the splash pad is currently closed.

3. Staff Communications
   None.
4. Board
   Trustee Gaiter thanked the Town Public Works staff on working on the potholes.

G. EXECUTIVE SESSION (If Needed)
No Executive Session.

H. ADJOURN
Upon a motion duly made, the meeting was adjourned at 9:55 p.m.

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Krystal Eucker, Town Clerk

BOARD OF TRUSTEES
August 12, 2020
7:30 PM

Special Meeting

MINUTES

A. **CALL TO ORDER**

Mayor Hammon called the regular meeting of the Board of Trustees to order at 7:30 p.m.

1. Pledge of Allegiance

   Mayor Hammon asked that all rise for the pledge of allegiance.

2. Roll Call

   Mayor Troy Hammon
   Trustee Wyatt Knutson
   Trustee Jon Gaiter
   Trustee John Jerome
   Trustee Rebekka Kinney
   Trustee Ashley Macdonald
   Trustee Tim Whitehouse

   Also Present:
   Kelly Houghteling, Interim Town Administrator
   Tyler Sexton, Interim Finance Director
   Cody Bird, Director of Planning
   Bob Gowing, Director of Public Works
   Krystal Eucker, Town Clerk

3. Amendments to Agenda

   Mayor Hammon asked if there are any amendments to the agenda to which there was none.

4. Conflict of Interest

   Mayor Hammon asked if there were any conflicts of interest on this evening's agenda to which there was none.

B. **COMMUNITY PARTICIPATION**

1. Public Comment
   Mayor Hammon opened the meeting up for public comment to which there was none.

2. Presentation
   There were no presentations on the agenda.

C. ACTION ITEMS

1. Annexation Agreement and Development Agreement for Poudre School District
   Per Mr. Bird, the Town Board was previously presented with a draft annexation agreement regarding annexation of land owned by Poudre School District. The draft agreement was tabled to the August 11, 2020 and again to August 12, 2020. Town Board meeting to allow revisions to the agreement. The annexation agreement has been coordinated between Town staff and PSD staff. It was also determined to be advisable to enter into a development agreement concurrently with the annexation agreement. Drafts of both agreements are attached, and both agreements have sections that require further coordination. It is recommended that the agreements be tabled to a later meeting for action

   Trustee Whitehouse commented on the road impact fee and there would be an average of 3,000 daily vehicle trips, that number seems very high.

   Trustee Whitehouse moved to approve to table to PDS Annexation and Development Agreement to August 28, 2020; Trustee Jerome seconded the motion. Roll call on the vote resulted as follows:

   Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon
   Nays - None
   Motion carried.

2. Resolution No. 28-2020 - Raw Water Dedication Fee-in-lieu Rates
   Mr. Bird informed the Board that what is before them is a draft resolution proposing to reestablish the raw water dedication requirement and the cash-in-lieu rate in lieu of water medication. For some background context, Wellington last updated the raw water cash-in-lieu rate in April 2017. That's been a little over three years now since the raw water rate was adjusted and, in that time, the share prices for water have grown exponentially and our cash rates have not kept up with that pace. The numbers on the proposed resolution are to reflect the current market pricing for shares of water that we need for this time to continue to grow. One thing that is new in this proposed resolution is a split for indoor consumption and outdoor use. Staff feels is vitally important for Wellington's future because they are two very different needs and as you can see, it's a pretty close to 50% split. Staff does think it's important as we know the scarce resources are only going to grow scarcer to be able to conserve and adjust our fees appropriately based on demand.

   Mr. Gowing commented that the basis of this is to determine the indoor annual water usage and the average annual outdoor water usage and encourage the dedication of shares for that. Town staff is assuming that we will not be able to purchase these shares for an average of a year due to the scarcity of North Poudre Shares and the Town's own inability to buy as many shares as we would like.

Town staff basically took the historic market value of North Poudre Shares, calculated the inflation and applied that to the current market value for one year and that that inflation rate is about 40% which is approximately $280,000.

Trustee Gaiter inquired if the developers are not required to pay a fee if they are going to dedicate water.

Mr. Gowing stated that is correct, in fact the stated in fact the standard is to dedicate shares.

Trustee Whitehouse inquired as to what kind of outreach has been done to the developers.

Mr. Gowing stated there has not been a formal presentation outside of what the Board has seen.

Mr. Bird stated there have been numerous conversations with developers and builders over the last few years letting them know that the water rates will have to increase at some point and the Town has reached that point. Most of the feedback that was received from the developers after the public hearing was that we understand the rates need to go up but that is a big number.

Mayor Hammon inquired if the development community was shocked to see the North Poudre shares go up as well.

Mr. Bird stated he can not speculate to their reactions but would imagine their reaction was the same as the Town's.

Trustee Whitehouse inquired if the cash-in-lieu pricing represents the true cost to Wellington to provide this service, except for the inflation.

Mr. Gowing stated it is the best estimate of the true cost.

Trustee Macdonald inquired if it would acceptable for a developer to bring in equivalent amount of CBT shares.

Mr. Bird stated the prior ordinance did allow for contribution of CBT shares. The current ordinance before the Board provides that flexibility. The nuance is that not all water shares are the same and delivery of CBT shares means something very different than delivery of North Poudre shares. There are also other limitations on how those shares are used by the end user. The Town reserves the right to decline the CBT shares in this resolution.

Mr. Gowing stated there is no delivery system in place for CBT shares.

Trustee Jerome inquired as to why there is a significant change in the draft that was presented at the work session to the draft before the Board this evening.

Mr. Bird stated what was presented at the work session was the methodology for indoor and outdoor use although the factor of inflation was still being worked on.

Trustee Jerome inquired if there will be any assurances that folks living in newer developments with non-potable systems are not using indoor water for outdoor use as there have been instances in the past when pumps on non-potable systems are broken.

Trustee Knutson commented that that would be a short-term use.

Mr. March informed the Board that there are certain subdivisions that have agreements with the Town regarding maintenance of no-potable systems. Should those systems fail, the Town can step in and take over operations, make assessments and collect fees. The Town does hold security deposits to ensure that when systems fail, the problem will be fixed.

Mayor Hammon opened the meeting for public comment.

Daren Robertson with Sage Homes commented that in our development agreements and covenants, it is required that all residents use the non-potable system and cannot use potable water for outdoor use. Mr. Robertson sees the need for an increase and suggested doing a step increase over the next 6-9 months. Mr. Robertson is asking to allow home buyers that are currently making the decision to purchase a home be allowed to do so under the current fees. There could be a list provided of potential buys that are in the pipeline.

Landon Hover with Hartford Homes commented that he is struggling that Wellington is the only municipality or water district that have arrived at these rates being the highest in the surrounding area. Mr. Hoover echoed Mr. Robertson and would also like to see a step increase.

Mayor Hammon commented that the developed brought up some good points and inquired if Wellington could consider the individuals that are currently under home contracts and if there is a possibility or a step increase.

Trustee Gaiter commented that section three does address homes that are under contract. Also, the water situation in municipalities vary so it is difficult to compare municipalities in that aspect.

Trustee Macdonald commented that a concern is if we if we blindly approve this increase number without seeing exactly how it was calculated and overcompensate on this, we could kill the development that supposed to be paying for this growth.

Trustee Jerome commented that as we've been talking about raising the water rates for the home usage, it is believed that those rates were being calculated with these impact fees not being part of that equation. That is the reason Wellington is in some of these water issues is we had been taking those impact fees to help bolster the water treatment part. When the new water rates are being discussed, those rates don't include taking these impact fees and subsidizing the water treatment portion.

Mr. Sexton stated that is correct, the rate is set specifically to do that in order to avoid a problem of slowing down development. If development was stopped completely, those rates would be able to sustain the water costs, as well as the capital improvement projects that come down the line.

Trustee Gaiter inquired as to a rough estimate of the cost under the old rates of the 10 shares we just purchased was cash-in-lieu for the entirety of those shares.

Mr. Gowing stated we're currently charging roughly half of what it's worth; Wellington paid $2 million for 10 shares and under the old cash-in-lieu we would have received $1 million.

Trustee Gaiter commented that Wellington can't afford any substitution, a 50% substitution is outside of what we can afford to do so.

Trustee Whitehouse inquired if Wellington takes a step increase approach, what would prevent someone from coming in and paying for all their water but not bringing homes online for years.

Mr. Bird stated that is a concern that staff had so to help alleviate that, we would like fees to take effect and allow any contracts currently in place to honor the old fees to prevent a flood of new permit applications, just to beat the fees. I think it would be possible to do a step to approach, knowing that we're establishing a cutoff date for the applications with a contract and make that time limited. Step approach would allow the development community to increase their fees, respectively, with those planned incremental steps.

Mayor Hammon inquired as to what it would take to figure out the step approach.

Mr. Bird stated if that was a desire, staff can take the current proposed fee and divided by three to get your step increases and then establish how much time passes between each step.

Trustee Gaiter commented that he is not comfortable with the step approach as it feels like we are going backwards. Wellington is are already negative on this and it needs to be addressed.

Trustee Gaiter moved to approve Resolution 28-2020 with the corrected date, grammatical corrections and with the change to section three that has says no reduced payments allowed by this paragraph shall be accepted by the town after October 15, 2020; Trustee Kinney seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Whitehouse, Hammon
Nays – Macdonald
Abstain – Knutson
Motion carried.

3. <u>Ordinance No. 16-2020 - An Ordinance amending Section 2-2-70 of the Wellington Municipal Code as it relates to Special Meeting Notification</u>

Mr. Brad March stated earlier this year the Board went to electronic meeting postings on the internet, rather than postings in place for meetings; this did not include special meetings. The change to posting meeting on the internet was due to legislative changes that encouraged internet postings as they were thought to be more effective in today's world.

Special meeting notices are currently still required to be delivered to Board Member's homes which; it would be more efficient to send them electronically.

Mayor Hammon opened the meeting up for public comment to which there was none.

Trustee Macdonald moved to approve Ordinance 16-2020; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon
Nays – None.
Motion carried.

Mayor Hammon closed the regular meeting at 9:15 and opened the Liquor License Review Board.

D. OTHER BOARDS

<u>Roll Call</u>
Mayor Troy Hammon
Trustee Wyatt Knutson
Trustee Jon Gaiter
Trustee John Jerome
Trustee Rebekka Kinney
Trustee Ashley Macdonald
Trustee Tim Whitehouse

1. <u>Liquor License Review Board</u>
Annual Renewal - Beer and Wine Liquor License
Hong Investments LLC
d/b/a Papa's Table

Mr. March informed the Board that state law allows the Board to call a hearing on a liquor license renewal application although this is something that is not mandatory. The renewal applications before the Board this evening may be approved by the Board although if the Board feels a public hearing is needed, that can be done at the next regular meeting after the notice has been posted.

Mr. March informed the Board that Hong Lu Investments, LLC, d/b/a Papa's Table submitted their annual renewal for their Fermented Malt Beverage liquor license. A review of the application found the establishment is in good standing with the Colorado Secretary of State, the establishment is current with sales tax and the Larimer County Sheriff's Office reported no issues directly related to the establishment's liquor license.

Mayor Hammon opened the meeting for public comment to which there was none.

Trustee Jerome moved to approve the annually renewal for beer and wine liquor license for Hong investments, LLC doing business as Papa's table; Trustee Knutson seconded the motion. Roll call on the vote resulted as follows:
Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon
Nays – None.
Motion carried.

2. <u>Liquor License Review Board</u>
Annual Renewal - Fermented Malt Beverage
Mini Mart Inc.
d/b/a Loaf "N Jug
Mr. March informed the Board that Mini Mart, Inc., d/b/a Loaf 'N Jug has submitted their annual renewal for their Fermented Malt Beverage liquor license. A review of the application found the establishment is in good standing with the Colorado Secretary of State, the establishment is current with sales tax and the Larimer County Sheriff's Office reported no issues directly related to the establishment's liquor license; the calls to the location were of individuals that appeared to have been intoxicated prior to arriving at the establishment.

Mayor Hammon opened the meeting for public comment to which there was none.

Trustee Gaiter moved to approve the annual renewal for fermented beverage liquor license for Mini Mart Inc., doing business as Loaf 'N Jug; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon
Nays – None.
Motion carried.

Mayor Hammon closed the Liquor License Review Board and resumed the regular meeting.

E. REPORTS

1. Town Attorney

a. Citizen Initiative Update

Mr. March reviewed the memo regarding the citizen initiative that was included in packet material.

2. Town Administrator

a. Economic Development Discussion

Ms. Houghteling stated at our last regular meeting a proposal from a firm to provide temporary economic development services was included in packet material. Having done some more research, it was realized that firm had previously done work for Wellington and it was not work that we felt was efficient or that met our quality of standard. Having that information, staff would like to ask the Board on how to proceed. The three potential options are we could do a request for proposals, most likely that would take about two months, we could hire an economic development manager or we wait until the town administrator is hired to discuss any next steps regarding economic development.

Trustee Macdonald inquired what would be the benefit to the Board to do an RFQ for this situation, instead of an RFP, since we were a little nervous about some of the qualifications and performance of the previous proposal.

Ms. Houghteling state we could do an RFQ for this.

Trustee Gaiter commented that he would like to see us go the route of finding a firm in the interim.

Trustee Kinney commented that she agreed with Trustee Gaiter.

After discussion, it was the general consensus of the Board to move forward with an RFQ.

3. Staff Communications
None.

4. Board
Trustee Gaiter commented that he has received comments from citizens that their water bills are fluctuating and bills are coming in incredibly high so I don't know if Town Staff knows what has been driving that because we haven't made any changes.

Ms. Houghteling stated staff will check into that as I don't have an answer for you this evening.

Trustee Macdonald commented that she attended the North Poudre Irrigation Company Board Meeting and they have three shares that are closing tomorrow at $190,000. Additionally, she recently attended that the Housing Authority Board and they expressed some significant concerns about the water rates; she encourage the director of the Housing Authority Board to provide a letter from the Board expressing their concerns and if they wanted to weigh in on the topic. Trustee Macdonald was also contacted by the School District Board member this morning and that communication was passed onto Mayor Hammond and Kelly Houghteling.

Trustee Kinney wanted to thank the members of the public that did join and stick with us for so long. I do appreciate your input.

F. EXECUTIVE SESSION

1. Conferences with negotiators for the local board as allowed pursuant to § 24-6-402(4) (e)(I), for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators relative to needs to lease or acquire space for new Town facilities. As required by C.R.S. §24-6-402(2)(d.5)((II)(E) the executive session proceedings will electronically recorded and the record will be preserved for 90 days through November 9. 2020.

Trustee moved to go into executive session for the purpose of conferences with negotiators for the local board as allowed pursuant to § 24-6-402(4) (e)(I), for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators relative to needs to lease or acquire space for new Town facilities; Trustee Jerome second the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson, Hammon
Nays – None.
Motion carried.

The executive session was closed and the Board of Trustee returned to the Regular Meeting.

G. ADJOURN

Upon a motion duly made, the meeting was adjourned.

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Krystal Eucker, Town Clerk

BOARD OF TRUSTEES
August 25, 2020
6:30 PM

Regular Meeting

MINUTES

A. CALL TO ORDER

Mayor Pro Tem Knutson called the regular meeting of the Board of Trustees to order.

1. <u>Pledge of Allegiance</u>
   Mayor Pro Tem Knutson asked that all rise for the pledge of allegiance.

2. <u>Roll Call</u>
   Mayor Pro Tem Knutson
   Trustee Jon Gaiter
   Trustee John Jerome
   Trustee Rebekka Kinney
   Trustee Ashley Macdonald
   Trustee Tim Whitehouse

   Mayor Troy Hammon – ABSENT

   Also Present:
   Kelly Houghteling, Interim Town Administrator
   Tyler Sexton, Interim Finance Director
   Cody Bird, Director of Planning
   Bob Gowing, Director of Public Works
   Krystal Eucker, Town Clerk

3. <u>Amendments to Agenda</u>
   Mayor Pro Tem asked if there were any amendments to the agenda to which there was none.

4. <u>Conflict of Interest</u>
   Mayor Pro Tem asked if there were any conflicts of interest on this evening's agenda to which there was none.

B. COMMUNITY PARTICIPATION

1. Public Comment
   Mayor Pro Tem Knutson asked if there was anyone wishing to make a public comment to which there was none.

C. CONSENT AGENDA

1. Minutes of the July 14, 2020 Regular Board of Trustees Meeting

2. Minutes of the July 15, 2020 Special Board of Trustees Meeting

Trustee Kinney moved approve the consent agenda; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson
Nays - None
Motion carried.

D. ACTION ITEMS

1. Water Treatment Plant Expansion: Design & Construction Recommendations
   Mr. Myer informed the Board that in 2018, the Town retained Stantec for the planning, design, and preparation of construction documents for Wellington's water treatment plant (WTP) expansion. A Construction Manager at Risk (CMAR) project delivery method was employed with Hydro Construction (Fort Collins) on board as the contractor.

   As the design developed, the project experienced significant construction cost estimate increases, escalating from approximately $14.7 million to the latest price of approximately $26.5 million (which does not include engineering construction services). This is despite value-engineering efforts conducted by the CMAR team in early 2019. The latest WTP design documents (current design) were developed by Stantec to the 90-percent level and were submitted the Colorado Department of Public Health and Environment (CDPHE) in July 2019. Wellington has already secured a State Revolving Fund (SRF) loan for the WTP expansion and is incurring debt services.

   In December 2019, several changes in the Town's project team, the aforementioned cost concerns, and the contractor's temporary unavailability have prompted Wellington to employ Jacobs Engineering Group (Loveland, CO) to conduct an independent review. Serving as a "due diligence/project alignment" effort, the independent review was to either affirm the current design or offer an alternative path forward to meet the Town's goals for capacity and treated water quality. Jacobs' final report was received on April 29, 2020 and presented to the Town Board on May 26 and recapped during the July 21 work session. In their report, Jacobs outlined an alternative design that offers many benefits over the current design:

   - Improved constructability: Ability to operate the existing WTP during most of the construction.

- Process familiarity: Operate existing floc/sed in a way staff is accustomed (staff does not have to learn the DAF technology operation).
- Ozone Simplification: Operate ozone without concern for disinfection monitoring, simplifying process operations.
- Elimination of Mechanical Solids Dewatering: Solids handling is simpler, requiring very little daily attention, less demand on staffing, drier solids so less hauling.
- Reduced Costs: Less expensive capital and O&M costs.
- Taste and Odor Removal: Taste and odor removal below detection thresholds 10 part per trillion Geosmin) under all but the most extreme conditions (typically 90 to 95% removal).
- Flexibility: More flexible for treating a variety of potential future raw water quality supplies.

Several meetings were held between Jacobs, Hydro Construction, and Town staff to discuss the alternative design. Staff agreed that the alternative design offered significant advantages over the current design and requested Jacobs to submit a proposal for design fees and construction management services. The first draft of Jacobs proposal was received on July 31. After conversations with Town staff and negotiations to scope items and fees, the final Jacobs proposal was received on August 14. The proposed schedule shows design initiated in August 2020 and completion of construction in March 2024, a year ahead of the CDPHE Compliance Schedule requirement of completion by May 2025. The following tasks represent the scope of services:

1. Project Management
2. CDPHE and SRF Coordination
3. 10% Preparatory Design
4. 30% Design Plans and Specifications
5. 60% Design Plans and Specifications
6. 90% Design Plans and Specifications
7. 100% Design Plans and Specifications
8. Ozone Equipment Pre-Procurement Package
9. Services During Construction
10. On Site Services During Construction

Town staff recommends proceeding with Jacobs' alternative design and accepting the Jacobs' proposal for design and engineering services during construction. The total cost represents design fees of $2,371,133, roughly 10 percent of an estimated construction cost ($23.3M) and construction management services of $1,006,124, about 4 percent of the estimated construction cost. These percentages are consistent with industry standards. Staff does not recommend instituting a formal request for proposal (RFP) for these services which could take 12 weeks or more (pre-qualifying, advertising, bidding process, review of proposals, selection committee timing, interviews, board approvals and schedules, etc.) and delay the schedule. The Jacobs' staff has indicated immediate availability and have demonstrated themselves reliable and members of an elite design team with considerable experience in the proposed treatment processes.

Town staff also recommends continuing with the CMAR project delivery method and retaining Hydro Construction as the contractor on the following basis:

- Hydro has a successful working relationship with Jacobs on several construction projects in Colorado.

- The firm has been involved with and maintains significant background and knowledge from the previous design and value engineering efforts.
- Hydro is familiar with the sequencing challenges needed during construction and can offer solutions to mitigate these challenges.
- Hydro already worked with numerous vendors and other subcontractors that will be necessary for this project.
- Securing bids from other contractors would be time consuming and detrimental to the necessary design and construction schedule.

Trustee Jerome asked how Mayor Pro Tem Knutson how he felt about this.

Mr. Pro Tem Knutson commented that the proposal was laid out well as far as contract times and has been impressed with how they've been proceeding with this project so far.

Trustee Gaiter inquired about the funds already expended and if the project will end up being somewhere between 30-40 million

Mr. Myer stated he feels confident but there are no guarantees in construction, especially with COVID around and material prices so volatile.

Mr. Gowing stated he is very confident that the changes to the approach on the design will result in lower project cost than the previous version. Going with conventional treatment and removing the mechanical watering and the DAF, will result in a more cost-effective project.

Trustee Gaiter inquired if the design that Wellington will be moving forward with will avoid the same problems as the previous plan where the water treatment plant could possibly be down for months.

Per Mr. Myer; no, they will not need to shut down while under construction.

Mr. Saxton responded that they may have to connect a pipe or do something quickly which could cause a minor interruption but that will not be interrupting daily production of the water.

Trustee Gaiter inquired if they will be available to start construction as soon as design is ready.

Per Mr. Saxton; absolutely.

Mr. Meyer asked that the Board approve to proceed with the alternative design, executing a contract with Jacobs for the design and construction fees and using Jacobs at the engineer and Hydro as the contractor. If approved by the Board, they will sit down and clarify terms in an agreement.

Mr. March suggested that if the Board approves to move forward, it should be subject to Town Administrator and Attorney review.

Mayor Pro Tem Knutson feels that if there are no major sticking items and if it's just the indemnification and other minor things that can be worked out before the final contracts proposed then we can authorize them to proceed with the contract but they need to see it before its finally approved. If the Board is comfortable then Mr. March and the Town Administrator would approve the final contract so there would not need another meeting.

Ms. Houghteling stated if the Board is comfortable then they could procced with the staff recommendations and Mr. March will look at the legal side for review. If there is anything that sticks out, then they will bring it back to the Board.

Mayor Pro Tem Knutson opened the discussion to the public – which there was no comments

Trustee Jerome moved to proceed with Jacobs independent review final report as described to the board on May 26, 2020 and July 21, 2020, authorize execution of contract with Jacobs Engineering not to exceed $3,377,257 on a time and materials basis for engineering and design and construction services on the water treatment plant expansion project. Employ the CMAR Project delivery method utilizing Jacobs Engineering group as the engineer and retaining Hydro Construction as the contractor and subject to Town Attorney approval of the indemnity clause. approve the consent agenda; Trustee Gaiter seconded the motion. Roll call on the vote resulted as follows:

Yeas - Gaiter, Jerome, Kinney, Macdonald, Whitehouse, Knutson
Nays - None
Motion carried.

2. Review of Office Space Memorandum of Understanding: Wellington Chamber of Commerce

Ms. Houghteling informed the Board that before the Board is the MOU for shared office space with the Wellington Chamber of Commerce. The Board has considered a different option as it relates to our immediate office space needs for staff, the question before the board is whether to end those MOU's that are in place to accommodate those additional staff needs.

Trustee Gaiter inquired if Wellington is receiving compensation from the Chamber for their occupancy of the space and what the ongoing costs of the facility are to Wellington.

Ms. Houghteling stated the agreement with the Chamber says that the Chamber agrees to pay $200 per month to offset the cost of occupancy or provide such in kind services.
Mr. Sexton stated Wellington has not received any deposits. Mr. Sexton also stated that Wellington supplies the Internet, Excel, the trash, the gas and the water right now which is roughly around $240 a month.

Trustee Whitehouse commented that there was a copier that was also being utilized that was part of some initial agreement.

Ms. Houghteling stated she believed that was part of an in-kind service when a Wellington staff member occupied that space which currently there is no staff person in place.

Trustee Kinney wanted to applaud the efforts of both the Chamber and the Main Streets Program for all their efforts to the community especially during COVID.

Trustee Macdonald inquired as to what the need is for more office space.

Ms. Houghteling stated the Town is hiring staff that were approved in the 2020 budget. Currently staff are sharing office space and people are having to work from home. As we start to bring people back into the office and bringing in new hires we have run out of space and this was one of the options for us to review.

Trustee Whitehouse inquired as to what the time frame is that we are looking at

Ms. Houghteling confirmed that Town Hall is over capacity. The new Finance Director will be starting on September 9th, the Communication specialist is starting Labor Day week, the Town Administrator will most likely be starting the end of the year, the planner and administrative assistant also started. Those spaces are quickly filling up.

Mayor Pro Tem Knutson opened the meeting up for public comment

Linda Knaack, 3703 Cleveland Ave, Wellington, CO expressed her concern for the disconnect between the Chamber, the Town and Main Streets. Ms. Knaack stated that the Chamber and Main Street helped their business with even the simplest of things and hope that we can find a way to make this a win win for all parties involved.

Lisa from Polish Spa at 136 Second Street commented that it's been a crucial year for her business and the Chamber and Main Streets have gone above and beyond to help her stay alive during this pandemic. She would like to see collaboration rather than competition between the Town, the Chamber and Main Streets.

Christy Cannon, The Chamber Board of Directors commented that the US projections are predicting that 50% of all Chambers in the US are going to be out of business in 2021. She wants to highlight the top 10 accomplishments for this year:

- They have 150 members and this year they built and kicked off a three-year strategic plan preparing for future success.
- Sponsored the Board of Trustees candidate forum
- Formed a COVID task force immediately and strong partnership with Main Street
- Held a fundraiser with 100% of the funds going back to local businesses. $15,000 were raised, which went back to 11 local businesses and $4.000 went directly to local restaurants.
- Celebrated the community with a visible banner congratulating high school seniors and college graduates.
- Ordered signs out of their own money for local businesses to help promote that they were open for takeout and delivery.
- Partnered with North 40 news for free advertising to our members spotlighting them for what they do with their business.
- Partnered with the town with $10,000 to business development center to offer consulting services to help them grow to the next level.
- Offer monthly members and non-members networking opportunities.
- Provides additional marketing supporting local businesses with a professional directory for all the new people that move into Wellington, so they know what businesses are already here.

Jon Slutsky, Chair of the Wellington Area Chamber of Commerce read a letter that he sent to the Mayor and the Trustees. The letter expressed their shock and sadness of the Town's intention to cancel the MOU that is in place. The ties between the Town and the Chamber became a strong working synergy sharing a strong vision for the town. The Chamber was organized and ready to react when the pandemic occurred, and the groups quickly put together a combined covert task force to help local businesses. Believes that the results of their efforts were in part to the shared office space. Would like to Board to consider the value the Chamber of Commerce brings to our community. Believes they have more than met halfway by providing an enhanced professional foundation to help attract and retain the business aspect of the town. Sharing an office space with the Chamber, Main Street and the Town paints a picture of collaboration and cooperation. They believe this image is invaluable when marketing our community to perspective businesses and portrays a culture of professional collaboration. They are concerned that a separation will recreate walls and barriers to a cohesive community leadership cooperative. They appreciate what the Town has done for them in the past and what it will do for them in the future. The decision will not dissuade them from their core mission to maintain and nourish local businesses, but they are disheartened by our decision to dissolve the mutually supportive relationship as exemplified by the shared space.

Linda Kinzli expressed her concern of what it will cost to move and the unlikelihood of finding a place in Wellington to move to. She believes they are looking at $15.00 to $19.00 a square foot if they can find it. She asked for some consideration on behalf of the Chamber and collaboration as the MOU that was agreed upon only five months ago. They were shocked to get a notice and would like some consideration and concessions since the Town is putting them in a serious dilemma. She asked for some concessions to help them get started somewhere else or some additional time, but mostly would like the town to completely reconsider and allow them to continue doing the good work they have been doing for the past six months.

Kristi Cannon stated there are no rentals available in wellington right now. She said there is a huge gap in what they are currently paying that puts them in a very dire financial situation going forward. They were paying around $3600 a year for a rental and now they could be looking at around $2000 a month. That will create a real hardship for the Chamber. They are in a very bad financially situation from where they've been and moving out and not having a place to move to. Linda Kinzli reiterated that they have been subsidized since the beginning. She is not sure how they are going to sustain and continue. She feels like the rug has been completely pulled out from under them especially with how successful the collaboration between Main Streets and the Town has been. Sustainability is very questionable with the challenges they have a head of them.

Trustee Jerome commented that he believes it is the Boards responsibility to the taxpayers to spend their tax dollars wisely. The Town would be required to go out and lease a property which would require taxpayer's money on the office space and doesn't think it is financially responsible since we have owned property that is in question. He is not saying that Main Streets and the Chamber aren't valuable partners because they are. He believes that both the Chamber and Main Streets have been working from home since COVID 19 and have been working very effectively. Responsibility of the taxpayers must come first and then partners would become second.

Trustee Gaiter inquired if there can be more cubicles and maybe remove the access to conference tables and still allow the Chamber and Main Streets to occupy two of those spaces within the Harrison House.

> Ms. Houghteling stated we would have to work on getting quotes to add cubes or possibly demo out the kitchen to add potentially two more spaces. Another option could be looking at different options if they are considering a modular plus demoing that entire space. It would all depend on what quotes would come back at. The Town needs 10 to 12 spaces so if they can't maximize it there, she recommends looking elsewhere. If the Board retains that property we would have to go and find commercial or multiple modular units to set

them up.

Trustee Gaiter inquired as to the cost to the Town if they were to pursue commercial property upfront and ongoing monthly costs.

Ms. Houghteling thought the upfront cost is around $84,000 and monthly rent could be around $4,000.

Trustee Macdonald inquired what the current size of town hall is, how many employees are currently in Town Hall and if we are in the process of hiring Executive level staff.

Ms. Houghteling explained that Town Hall is roughly 900 square feet with nine employees and one bathroom. They are in the process of hiring a Finance Director and Town Administrator at the end of the year. She is not sure where they are going to put these new employees as they are kicking people out of their current spaces and already sharing spaces.

Trustee Kinney commented that all events and fundraisers were cancelled because of COVID 19 and these events help make sure that these programs are viable in the future. Since the Town is cancelling this contract and adding an additional burden, she believes that from the perspective of the Town and the Board should be that we commit to a fair and reasonable concession. She believes that the Town needs the Harrison house for its employees but is compelled to say that we must take care of these two programs because of their value to our community.

Trustee Kinney inquired if the Town would be able to provide concessions or if we were limited in any way to provide financial support for breaking the contract.

Ms. Houghteling stated if she was looking for rental support that is not something that was budgeted and that would have to be a budget amendment for the Board to consider. If she was looking for a time regarding the move out date for the Chamber, it would be 45 days with written notice. Regarding the Main Streets MOU there is no date of how many days of notice but that is something the Board can discuss in this meeting.

Trustee Kinney asks that we consider extending the move out date to the end of the year and consider a financial concession for breaking a lease.

Trustee Macdonald wants to urge and caution that if we provide this concession for one we should be prepared to provide that same concession across the board. She feels that some of this conversation is about negotiation and would be more comfortable if it was moved into something like an Executive Session.

Trustee Jerome wanted to clarify that there is no lease, and this is a MOU (Memorandum of Understanding) and inquired if we have given the written notice yet.

Ms. Houghteling responded no.

Trustee Gaiter thanked the members of the community for speaking about what these organizations have done for our local businesses. He wanted to make clear that he does not see this as pulling out of the relationship with the Chamber. The initial idea was fantastic and it's great to see working together and that synergy has started to happen. This is not the Town saying we do not value these organizations and what they do. We need to look at our own responsibility. He would love to see some way that we can help to make this process a smoother transition for both organizations.

Trustee Whitehouse mentioned that maybe we can brainstorm and work together to find some solution for these organizations.

Trustee Kinney asked if the Board will consider the end of the year to provide the time needed for these programs.

Trustee Macdonald suggested that we give them notice the first of October which would get them close to the end of the year.

Trustee Whitehouse inquired how a decision like that would impact other timelines with the Town and hiring.

Ms. Houghteling mentioned that when the job offer was made for the communications position they were asked to work from home until we had space so that is difficult from a recruiting standpoint. We will likely have to ask other staff members to continue working from home and continue desk sharing.

Trustee Whitehouse asked if all the new hires coming on would need an office space as opposed to being an equipment operator.

Ms. Houghteling responded that she is only talking about office staff.

Trustee Jerome made a motion to authorize the Interim Town Administrator to send a formal letter on September 1, 2020 to the Chamber of Commerce terminating the MOU office space agreement; Trustee Macdonald Seconded the motion. Roll call on the vote results as follows:

Yeas – Jerome, Macdonald, Knutson
Nays – Gaiter, Kinney, Whitehouse
Motion failed.

Trustee Gaiter moved to authorize the Interim Town Administrator to send a written notice to the Chamber of Commerce on October 1, 2020 ending the MOU; Trustee Kinney seconded the motion. Roll Call on the vote results as follows:

Yeas – Gaiter, Kinney, Macdonald, Knutson, Whitehouse
Nays - Jerome
Motion carried.

3. Review of Office Space Memorandum of Understanding: Main Streets Program

Mayor Pro Tem Knutson opened it up to the public.

Linda Knaak inquired how many more new staff is the town going to hire? Would like to know why all the sudden there needs to be more space since we've lost a lot of staff.

Kallie Cooper, Executive Director Wellington Main Street stated that they are incredibly grateful as an organization to have had the opportunity to utilize the space at the Harrison house. It has given them the financial flexibility to respond to the challenges of 2020 and develop partnerships with the Chamber and the Town. Stated that it will be a challenge to move but they will do it and come out more resilient.

Anita Hardy, President of the Board for Main Streets wanted to thank the Town for the opportunity to collaborate especially during the pandemic. She shared that they have grown this year and will continue to grow no matter where their office is located. They appreciated the time they had sharing the office space.

Trustee Macdonald thanked Ms. Cooper and Ms. Hardy for their time. She said they exemplify strength and leadership and applauded their resilience.

Trustee Gaiter inquired if we can give the Main Streets program the same consideration as the Chamber and give them 45 days from the 1st of October since there is nothing written in the MOU.

Trustee Kinney wanted to add that we also consider concessions or making those considerations as she very much values the work Main Streets Program has done.

Trustee Gaiter moved to approve the Interim Town Administrator provide a written notice to the Main Streets Program ending the MOU, providing that notice October 1, 2020 with 45 days for them to vacate. Trustee Kinney Seconded the motion. Roll Call on the vote results as follows:

> **Yeas – Gaiter, Jerome, Kinney, Macdonald, Knutson, Whitehouse**
> **Nays – None**
> **Motion carried**

4. <u>Annexation Agreement and Development Agreement for Poudre School District</u>

Mr. Bird stated they have made progress with PSD staff on a couple of outstanding items and they have got documents cleaned up except for a few minor items that they will tackle later. There is still some ongoing communication on the raw water dedication requirements and whether the school district has shares to contribute or whether we would accept cash for the portion. He believes they have made some progress with some ideas that might help bridge the gap between where the school district is and the Town is. They are working on cost estimates for the public improvements that would be needed in order to obtain physical security for the two-year warranty period. It is recommend that this item be tabled to a later date to get clarification and final numbers in the agreements.

Trustee Gaiter mentioned that he is frustrated that this item keeps getting tabled to the next meeting and inquired if there was anything negative that happens in terms of negations with PSD or Mr. Bird's ability to do work if they tabled it until it was ready to move forward?

> Mr. Bird responded that the school district is looking at risk and they want to limit that risk as much as possible. They want to get these documents approved as soon as possible so if we tabled this item two or three meeting out on a certain date and its ready before that date then they cannot bring it back. They have taken this one meeting at a time to preserve the option to move forward when its ready.

Trustee Whitehouse thought that if tabled something and don't have a date to bring it back on its effectively dead.

> Mr. March stated that if you tabled something indefinitely then it does just that. This is the reason that it keeps coming back.

Trustee Whitehouse inquired if there was any progress with the PSD Board and some members of the town staff.

> Ms. Houghteling stated that they are working on it and hope to have that scheduled within the next two weeks.

Mayor Pro Tem opened the meeting for public comment to which there was none.

Trustee Jerome moved to table this item to the September 8, 2020 meeting. Trustee Macdonald seconded the motion. Roll Call on the vote results as follows:
Yeas – Gaiter, Jerome, Kinney, Macdonald, Knutson, Whitehouse
Nays – None
Motion carried.

5. <u>High Service Pumps Replacement for Water Treatment Plant</u>

Mr. Myer informed the Board that Wellington's main water treatment plant (WTP) currently has three (3) high service pumps in operation. Pump 1 was serviced in 2017. Pumps 2 and 3 have not been serviced since they were installed around 2002 and are starting to show a decline in efficiency and pumping capacities from their original design. Because of this, we are adding extreme wear and tear on these pumps, and they are starting to fault and shut down when called to run. Thus, three (3) price quotes have been obtained for replacement of Pumps 2 and 3:

- Denver Industrial Pumps, Inc. has proposed two (2) Peerless Single Stage Vertical Turbine Pumps, 10 inches in diameter, ceramic mechanical seals, and stainless-steel suction strainers. Denver Industrial will also provide two (2) 3/230-460V motors. Denver Industrial's quote also includes for removing and evaluating the existing vertical turbine/motors to assess if one may be salvaged for a spare. Denver Industrial is the only vendor with the resources to perform this service. Note that any future repair costs to the existing motors are not be part of this price quote, only the inspection.
- Falcon Environmental Corp. proposed a Sulzer 12 GMC VT bowl assembly replacement pump and labor.
- Quantum Pumps & Controls has proposed two (2) Goulds Single Stage vertical turbine pumps with 10-inch column pipe, stainless-steel shafting, mechanical seals.

Staff did ask all three vendors the same thing, for complete replacement, motor & pump included. Denver Industrial was the only vendor that provided a quote for what was asked for.

This action item is to request a purchase from Denver Industrial Pumps, Inc. for two (2) new high service pumps and motors. The down time on these pumps will be minimal due to them being replaced with in-kind pumps. A secondary task of this purchase is for Denver Industrial to inspect the existing pulled pumps and motors for serviceability. This will forward the WTP to potentially have these pumps available to serve as redundancies for future expansion in capacities. Denver Industrial has in-depth knowledge of Wellington's treatment and pumping facility. The firm has consistently provided quality, cost-effective work on several projects for the WTP.

Mayor Pro Tem Knutson inquired if there was a chance we could possibly repair/replace some components on those and have them be used for off the shelf replacement parts in the future?

Mr. Jones responded that that is an option.

Trustee Jerome asked if these pumps are readily available.

Mr. Jones stated it will be about 8-10 weeks which is standard.

Trustee Jerome asked if there has been any consideration to installing any type of monitoring equipment on the pumps and motors to give guys a heads up if there are any anomalies with the way they're running so you don't have to wait until there is a breakdown.

Mr. Jones stated that he has been talking with a vendor that they can attach sensors to individual pumps that will tell them everything they need to know. That will help them be more predictive in their maintenance cycle versus reactive.

Trustee Gaiter inquired as to what the GL lines were originally slated for.

Mr. Jones responded that one was going to be for a brand-new purchase and the other one was to upgrade or repair the ones we had, so they were kind of lumped together.

Trustee Whitehouse inquired as to what the cost would be and if it would make sense to put sensors on the pumps now since they have not been serviced since 2002.

Mr. Jones explained that those sensors would not be implemented until 2021 and they would be on the new pumps in the new system so everything would be a fresh start.

Mayor Pro Tem Knutson opened the meeting up for public comment to which there was none.

Trustee Jerome moved to authorize a purchase from Denver Industrial Pumps for two high service pumps and motor and inspection of existing pumps for a total of $44,961; Trustee Whitehouse seconded the motion.

Roll call on the vote results as follows:
Yeas – Gaiter, Jerome, Macdonald, Kinney, Knutson, Whitehouse
Nays – None
Motion Carried

6. Water Treatment Plant: Sludge Removal from Ponds

Mr. Myer informed the Board that Wellington's main water treatment plant (WTP) currently has three (3) discharge ponds on site. These ponds receive filter backwash and sludge from the clarifiers. With the addition of treatment chemicals, the ponds fill with sludge which needs to be removed and disposed. If the ponds get too full, the plant has the potential to release the alum sludge back to Reservoir No. 3. In addition, our discharge permit limits the number of suspended solids we can discharge to an active waterway.

Sludge removal and disposal is extremely specialized, and thus Town staff was only able to obtain two proposals for this project:

- BioVelocity LLC will remove 0.3 million gallons from the ponds using a dredge, then pumped to a dewatering centrifuge, then to drying bed onto trailers to haul away ($80,000).
- Veris Enviromental will utilize geotube/bags stored onsite with the dry sludge removed by a long reach track hoe ($74,300).

This action item is to award a contract with BioVelocity LLC for the dredging, dewatering, hauling and disposal of the WTP's backwash ponds. BioVelocity LLC will remove the sludge from the premise and without the use of geotubes which is the preferred method.

Mayor Pro Tem Knutson asked DJ to explain to the board as to why this is such a specialized removal.

> Mr. Jones stated that this is chemically inducive and you can't just dump it into a normal landfill. There are not many people in the industry that deal with heavy laden sludges.

Trustee Gaiter asked why geotubes are not the preferred method.

> Mr. Jones stated the geotubes take up a lot of space they can be 100' wide by 20' and 8' when its full. The longer the water stays in the tubes it will leach out of the bag.

Trustee Whitehouse wanted to clarify that these contracts are not apples to apples. One is to separate and removal and the other is putting the geobags in and then another cost to remove them later.

> Per Mr. Jones; that is correct, and these were the only two that he could find and solicit bids for.

Attorney March wanted to point out that this contract has a provision that says the contractor shall not in any event be liable for indirect special consequential or liquidated damages or penalties for the based upon contract warranty tort or negligence. The Town could potentially be held liable for those penalties and could not hold the person holding the sludge liable. That may or may not be a concern.

Trustee Jerome asked if this provision is a concern to Mr. March.

> Mr. March stated it is a concern and he would be less concerned if that was not in the contract.

Mayor Pro Tem Knutson inquired if there was a timing issue or could we go back and ask them about the provision.

> Mr. Jones stated one of the timing issues is that these ponds are 90% full and what happens is that it will go back into Reservoir 3 which becomes discharge and an EPA issue.

Mayor Pro Tem Knutson inquired as to what the potential risk was to the Town.

> Mr. March responded that if there was a spill there could potentially be damages.

Trustee Macdonald commented that she does not see any problem with approving what's presented to the Board.

Trustee Jerome moved to authorize contracts with Bio Velocity LLC for sludge removal for the water treatment plant ponds not to exceed the amount of $80,000. Trustee Macdonald seconded the motion. Roll call on the vote results as follows:

> **Yeas – Gaiter, Jerome, Kinney, Macdonald, Knutson, Whitehouse**
> **Nays – None**
> **Motion Carried**

E. REPORTS

1. Town Attorney

   None.

2. Town Administrator

   None.

3. Staff Communications

   a. Treasurer Report - Tyler Sexton

      Trustee Gaiter thanked Mr. Sexon for the report.

4. Board

Trustee Whitehouse mentioned that the last two items that the Board approved were approved line item costs. He said it seems like they are approving something that's already been approved and would like to know if there is a way to clean that up.

> Ms. Houghteling stated that due to the purchasing policy there is a limit for the Town Administrator; anything over $20,000 needs to go back to the Board of Trustees. She said there are tweaks they would like to make to the purchasing policy but due to staff capacity they have not been able to. The new Finance Director will be tackling this around the first of the year.

Trustee Gaiter inquried if we received any answers or information about some issues regarding water bills running higher.

> Mr. Sexton stated that every month we go and read the meters and once it gets back to the Utility Billing Clerk, she will look at any high usage consumption from the prior month to the current month. We reach out to those citizens and ask them if there was anything outside the normal going on and around 80% of those people have installed new sod. On the rare occasion they have not done anything out of the norm, we will ask Public Works to go check the meter to make sure there are no leaks or anything on our end that would cause the meter to run. If the meter on our end checks out fine, we will advise the property owner to contact a plumber to see if there are any leaks.

Trustee Gaiter asked if there was an estimated reading we do versus a physical reading or if there are separate types of reading that we do for water utility.

> Mr. Sexton explained that during March and April the Twon did do estimates due to COVID. But the issue was that some of those people have not been users for a year, so they got a bill for zero gallons for those two months but when it came time to read the meters their bill was for three months of usage. He doesn't intend us ever doing that again unless it's a very rare set of circumstances.

Trustee Gaiter stated that there have been issues with contractors using the bulk water station. He wanted to know what the maximum fine is because his concern is that if the maximum fine is still less than what Fort Collins charges, we are still going to have issues. He also wanted to know if it is possible for us to increase the fine so that we can dissuade the contractors from using it and putting the water usage for residents at risk.

Mr. Brad March responded that the maximum standard fine is $1000 per incident.
Mr. Gowing responded that they are bringing an adjustment to the bulk water rate to the Board soon.

Trustee Jerome inquired if we have repeat offenders, could we look at some type of suspension or something that bars them from working in town.
Trustee Gaiter agreed with Trustee Jerome and was wondering if they could do more than just finef them.

Mr. March said he would investigate it.
Mr. Bird pointed out that the contractors that have been abusing the bulk water are contractors coming from other counties that have been on C-DOT projects and may not be aware of these provisions. He agrees with Trustee Jerome's comments and he just wanted to highlight that these citations have not been issued to any contractors that are doing work in town.

Michael Rairdon explained that the two contractors who were cited for theft on the water hydrants were also contractors that were working on projects outside of town.

Trustee Kinney stated that virtual school will be starting remotely and that it is a huge strain on a lot of our community. She said we should give a little extra grace and kindness and know that families are under a lot of stress.

Trustee Macdonald Inquired if Ms. Houghteling knew when the next water committee meeting was.

Ms. Houghteling stated that it has not been scheduled yet as she has a call with the water council next week, but they are in the middle of reviewing our NPIC contract.

F. EXECUTIVE SESSION – No executive session was held.

G. ADJOURN

Upon a motion duly made, the meeting was adjourned at

____

Krystal Eucker, Town Clerk

Board of Trustees Meeting

Date: October 13, 2020
Submitted By: Dave Myer, Engineer
Subject: Clarifier Rehab Construction Contract

- **Staff presentation: Dave Myer, Engineer II**

EXECUTIVE SUMMARY

Board of Trustees approval is requested on the construction contract for the Clarifier Rehab Project.

BACKGROUND / DISCUSSION

The project consists of modifications to an existing clarifier: remove existing clarifier equipment, install Town-purchased clarifier equipment, remove existing FRP scum baffles, weirs, and troughs, install Town-purchased FRP scum baffles and weirs, construct concrete trough, remove, refurbish, and reinstall existing scum beaches, install new scum beach supports, remove existing ductile iron pipe, install new ductile iron pipe, prepare existing and new ductile iron pipe and steel surfaces, paint existing and new ductile iron pipe and steel surfaces, and related appurtenant work.

The project was advertised by our engineering consultant (Farnsworth) and posted on Wellington's website. Sealed bids were received on September 30, 2020 from two contractors: Hydro Construction (Fort Collins); and. Stanek Constructors (Golden). Farnworth recommended awarding the contract to Hydro Construction as they are the low bidder and determined to be responsible. Town staff agrees with this recommendation. The formal engineer's recommendation and bid tabulation are attached.

The Agreement (Contract) for execution is included in the Project Manual that was prepared by Farnsworth using the to the industry standard, Engineers Joint Contract Document Committee (EJCDC)® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price).

Financial/Sustainability Considerations

Funding for this project is included in the 2020 CIP budget "Clarifier Rehabilitation Project" (GL No. 211-80-4028)

STAFF RECOMMENDATION

Authorize execution of contract with Hydro Construction Company in the not to exceed amount of $153,340.00 for construction services on the Clarifier Rehabilitation Project.

ATTACHMENTS

1. Engineer Recommendation and Bid Tabulation

Farnsworth GROUP

1612 Specht Point Road, Suite 105
Fort Collins, Colorado 80525
p 970.484.7477 f 970.484.7488

www.f-w.com | www.greennavigation.com

October 1, 2020

Town of Wellington
3735 Cleveland Ave.
Wellington, CO 80549

ATTN: Dave Myer, PE

RE: Clarifier Rehabilitation Project – Award Recommendation

Dear Dave:

The purpose of this letter is to submit our award recommendation, copies of the bid submittals, and bid tabulation for the Clarifier Rehab Project in Wellington, Colorado. We have attached the bid packages in Attachment A and the bid tabulation in Attachment B.

We are recommending Hydro Construction Company for the Clarifier Rehab Project. They are the low bidder for this project at $153,340. We conclude that the contractor is responsible and the bid is responsive. Their contact information is as follows:

Hydro Construction Company
77 NW Frontage Road
Fort Collins, CO 80524
Phone: (970) 225-2211
Fax: (970) 225-2991

Please call us with any questions you may have or additional information you may require.

Sincerely,

J.C. Cundall

J.C. Cundall
Sr. Engineering Manager
Farnsworth Group
jcundall@f-w.com
970-232-1205

Town of Wellington - Clarifier Rehabilitation
Bid Tabulation - September 30, 2020

Item No.	Description	Unit	Est. Qty.	Hydro Construction		Stanek Constructors, Inc.		Avg. of the Two Bids	
				Bid Unit Price	Bid Price	Bid Unit Price	Bid Price	Bid Unit Price	Bid Price
1	Mobilization/Demobilization	LS	1	$48,128	$48,128	$25,000	$25,000	$36,564	$36,564
2	Demolition	LS	1	$9,065	$9,065	$20,000	$20,000	$14,533	$14,533
3	Cleaning/Surface Preparation	LS	1	$6,786	$6,786	$15,000	$15,000	$10,893	$10,893
4	Concrete	LS	1	$37,905	$37,905	$130,000	$130,000	$83,953	$83,953
5	Ductile Iron Pipe	LS	1	$7,694	$7,694	$12,500	$12,500	$10,097	$10,097
6	Installation of Equipment	LS	1	$23,403	$23,403	$35,000	$35,000	$29,202	$29,202
7	Painting	LS	1	$20,359	$20,359	$30,000	$30,000	$25,180	$25,180
			Total of All Bid Items		**$153,340**		**$267,500**		**$210,420**

TOWN OF WELLINGTON

Board of Trustees Meeting

Date: October 13, 2020
Submitted By: Dave Myer, Engineer
Subject: Water Treatment Plant Expansion CMAR Contract Amendment

- **Staff Presentation: Dave Myer, Engineer II**

EXECUTIVE SUMMARY

An amendment to the existing CMAR Contract with Hydro Construction is required.

BACKGROUND / DISCUSSION

On May 24, 2018, the Town executed a Construction Manager At-Risk (CMAR) Contract (attached) with Hydro Construction Company (Fort Collins) for the construction of Wellington's Water Treatment Plant Expansion. In 2019, the Town obtained a State Revolving Fund (SRF) loan for the project. With that federally sourced loan comes the following requirements that must be met by the Contractor:

- Davis Bacon Wage
- American Iron and Steel
- National Term on Suspension and Debarment
- Disadvantaged Business Enterprise (not applicable in this case)
- Equal Employment Opportunity
- Williams Steiger Occupational Safety and Health Act
- Discovery of Archaeological Items

This Contract Amendment (attached) specifies the contractor's adherence to these SRF requirements. Additional amendment items are intended to update language in the original CMAR Contract.

Financial/Sustainability Considerations

No costs are associated with this Contract Amendment

STAFF RECOMMENDATION

Authorize execution of Contract Amendment with Hydro Construction Company for Wellington's Water Treatment Plant Expansion.

ATTACHMENTS

1. 2018-05-25 Hydro CMAR Contract
2. Wellington Hydro CMAR Contract AMENDMENT 1 BOARD REVIEW

CMAA

CMAA Document CMAR-1

Standard Form of Agreement Between
OWNER AND CONSTRUCTION MANAGER
Construction Manager At-Risk

2004 EDITION

This document is to be used in conjunction with Standard General Conditions (EJCDC C-710) and Supplementary Conditions (C-800).

AGREEMENT

Made this 24 day of May in the year of Two Thousand and 18

BETWEEN The Owner: Town of Wellington
PO Box 127
3735 Cleveland Avenue
Wellington, CO 80549

And the Construction Manager (hereinafter referred to as the "CM"): Hydro Construction Company, Inc., a Colorado corporation

For services in connection with the Project known as: Wellington Water Treatment Plant Expansion

As further described in Article 2:

The Owner and CM, in consideration of their mutual covenants herein, agree as set forth below:

TABLE OF CONTENTS

Article:

ARTICLE 1
RELATIONSHIP OF THE PARTIES

12.1 Owner and Construction Manager

The CM and the Owner shall perform as stated in this Agreement and each accepts he relationship between them that is established by this Agreement.

1.1.1 Standard of Care

The CM covenants with the Owner to furnish its skill and judgment with due care in accordance and in compliance with applicable federal, stale, and local laws and regulations hal are in effect on the date of this Agreement first written above, and as may be subsequently amended, and if amended, CM reserves the right to reasonable compensation.

12.2 Owner and Designer

The Owner, has contracted separately with Stantec Consulting Services Inc. {hereinafter collectively referred to as "Designers"}. From time to time, the Owner may delegate to the Designers specific authority and decision making capacity with regard to this Agreement and the construction of the Project. The Designers will provide engineering design for the Project. The Project is defined in Article 2 of this Agreement.

12.3 Owner and Contractors

The Owner will require the CM to contract directly with such Contractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement.

12.4 Relationship of the CM to the Designer and Other Project Participants

In providing construction management services described in this Agreement, the CM shall maintain a working relationship with the Designer. The Designer is responsible for the Project design. Nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the CM assumes any of the contractual or customary duties of the Designer or any other persons or parties not specified by this Agreement.

1.5. Illegal Aliens – Public Contracts for Services. C.R.S. 8-17.5-101 and Public Law 208

1.5.1 The CM certifies that the CM shall comply with the provisions of C.R.S. 8-17.5-101 *et seq*. The CM shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien. The CM represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, or (ii) otherwise will comply with the requirements of C.R.S. 8-17.5-101{2}(b)(I). The CM shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the CM fails to comply with any requirement of this provision or C.R.S. 8-17.5-101 *et seq*., the Owner may terminate this contract for breach and the CM shall be liable for actual and consequential damages to the Owner.

ARTICLE 2
PROJECT DEFINITION

The term "Project" when used in the Agreement shall mean the total construction of which the Work may be a whole or part of the Project. The term "Work" required for the "Project" used in this Agreement shall mean the various parts of total construction to be performed under this Agreement. For clarification, the Project will be constructed in a series of phases, each phase, until completion, constituting the Project. Any reference to the Project includes a reference to any phase thereof.

The Project name and locations are as follows:
Water Treatment Plant (WTP) Expansion

Town of Wellington, Colorado

The Project is intended for use as:
Water Treatment Facility

The work is for all services incidental to the construction management and administration of the improvements to the Wellington WTP (hereinafter referred to as "Project"). Specifically, CM shall be responsible for the scope of services as stated in Attachment A which is attached hereto and incorporated herein.

This project is being funded, in part, through a combination of Town cash, Energy Impact Grant and bank loan account. The project will be overseen by the Colorado Department of Public Health and Environment, (CDPHE} Department of Local Affairs.

ARTICLE 3
CONSTRUCTION MANAGER'S BASIC SERVICES

3.1 CM Basic Services

The CM shall perform the Basic Services described herein. It is not required that the Basic Services be performed in the sequence in which they are described.

3.2 Pre-Design Phase

3.2.1 Project Management - Not Used

3.2.2 Time Management

3.2.2.1 Schedule

The CM shall prepare a Schedule for the Project. The Schedule shall specify the proposed start and finish dates for each major project activity. The CM shall submit the Schedule to the Owner for acceptance.

3.3 Design Phase

The CM shall perform certain services pertaining to pre-construction activities, including Project design review, design phase services, Schedule preparation and amendment, and certain deliverables throughout the Project. A separate Task Order shall be executed and attached hereto for said services. Unless otherwise specifically provided for herein, nothing in this Agreement shall be deemed to amend, modify or alter the obligations of the CM as provided in said Task Order. The Task Order shall stand alone, and as for the services specifically provided for therein, the CM shall not be entitled to any additional compensation pursuant to this Agreement.

3.4 Procurement Phase

3.4.1 Project Management

3.4.1.2 Bidder's Interest Campaign

The CM shall conduct a telephonic and correspondence campaign to attempt to create interest among qualified bidders. In conducting said campaign, the CM shall use good faith efforts to contact Minority and Women Business Enterprises in compliance with the State of Colorado Construction Bidding. Any and all reporting requirements as delineated by the State of Colorado shall be prepared and submitted to the proper agency(ies) prior to the deadlines provided for therein throughout the entirety of the Project.

3.4.1.4 Delivery of Bid Documents

The CM shall expedite the delivery of bid documents to the bidders by forwarding requests to the Designers for delivery to the bidders.

3.4.1.6 Information to Bidders

The Designer and CM shall develop and coordinate procedures to provide answers to bidders' questions.

3.4.1.7 Addenda

The CM shall receive from the Designer a copy of all addenda. The CM shall review addenda for clarity, consistency and coordination. The Designer shall arrange distribution of copies of all addenda to each bidder receiving documents.

3.4.1.9 Construction Contracts

The CM shall prepare, execute, and deliver the Contract Documents between the CM and the Contractors. The CM shall also issue the notices to proceed to any Contractor.

3.4.1.10 0 Permits. Insurance and Labor Affidavits

The CM shall secure the required building permits, bonds, insurance, labor affidavits, and waivers.

3.4.2 Time Management

3.4.2.1 Pre-Bid Construction Schedule

The CM shall inform the bidders of their responsibilities regarding the Schedule.

3.4.3 Cost Management

The CM shall prepare an estimate of costs for all addenda and shall submit the estimates to the Owner. The addenda shall be transmitted to bidders and the Guaranteed Maximum Price and the CM's compensation shall be adjusted as provided in this Agreement.

3.4.3.2 Analyzing Bids: Upon receipt of bids the CM shall evaluate the bids, including alternate prices and unit prices.

3.5 Construction Phase

3.5.1 Project Management

3.5.1.1 Pre-Construction Conference

The CM shall conduct a Pre-Construction Conference during which the CM shall review the reporting procedures, including those required by the State of Colorado site operations and other contractual requirements

3.5.1.2 Onsite Management and Construction Phase Communication Procedures
The CM shall provide and maintain a management team on the Project site to provide contract administration and the CM shall establish and implement coordination and communication procedures among the CM, Owner, Designer, and Contractors.

3.5.1.3 Contract Administration Procedures
The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contractor schedule adjustments, change orders, substitutes, payment requests and the maintenance of logs. The CM shall maintain daily job reports. The CM shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment requests shall be submitted.

3.5.1.4 Project Site Meetings
Except as otherwise specifically modified by Design Task Order, periodically the CM shall conduct meetings at the Project site with each Contractor and the CM shall conduct coordination meetings with all Contractors, the Owner and Designer. The Designer shall record, transcribe and distribute minutes to all attendees, the Owner and CM.

3.5.1.5 Coordination of Other Independent Consultants Technical inspection and testing provided by the Designer or others shall be coordinated by the CM. The CM shall be provided with a copy of all inspection and testing reports on the day of the inspection or test or when issued. The CM is not responsible for providing, nor does the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function and is not acting in a manner so as to assume responsibility, in part or in whole, for all or any part of such inspection and testing.

3.5.1.6 Review of Requests for Changes to the Contract Time and Price
The CM shall review the contents of a request for changes to the construction contract time or price submitted by a Contractor assemble information concerning the request and determine the cause of the requests. In instances where the CM's analysis reveals that the request is valid, the CM shall prepare a detailed report to the Designer for approval. The Designer shall prepare the necessary change order documents for signature. Any such change order shall be approved by the Owner, or its designated representative, prior to the execution thereof.

3.5.1.7 Quality Review
The CM shall establish and implement a program to monitor the quality of construction. The purpose of the program shall be to guard the Owner against defects and deficiency in the work of the Contractor. The CM shall transmit to the Contractor a notice of nonconforming work and may reject work when it is the opinion of the CM that the work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the CM is not authorized as part of this service to change, evoke, enlarge, relax, alter, or to release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

3.5.1.8 Operation and Maintenance Materials
The CM, with the assistance of the Designer, shall assemble all operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project in accordance with the Contract Documents.

3.5.1.9 Substantial Completion
The Designer, in consultation with the CM shall determine when the Project and/or a phase of the Project is substantially complete. The Designer, in consultation with the CM, shall, prior to issuing a Certificate of Substantial Completion, prepare a list of work that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion. For the purpose of this Agreement, substantial completion shall mean the point in the progress of the Project, or any phase thereof, is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project and/or any phase thereof for its intended use. Upon the issuance of the Certificate of Substantial Completion for the Project and/or any phase thereof, the Owner shall assume responsibility for security, maintenance, utilities and insurance for the Project and/or phase. Prior to the issuance of a Certificate of Substantial Completion, the Designer and the CM shall recommend issuance of said certificate to the Owner, who shall have the ultimate decision regarding acceptance of the work as

substantially complete. The Owner shall not unreasonably withhold acceptance of the Project. or any phase thereof. as substantially complete.

3.5.1.10 Final Completion

The Designer, in consultation with the CM. shall determine when the Project and/or any phase of the Project is finally completed and, following completion of corrections and recommendation to the Owner to accept the Project. and/or a phase of the Project. shall issue a Certificate of Final Completion b the Owner. Upon final acceptance of the Project. and/or any phase of the Project. by the Owner, the CM. with the assistance of the Designers. shall prepare and publish a Notice of Final Payment, as required by Colorado statute. Following the expiration of the time provided in said Notice of Final Payment. and subject to the other requirements provided by law regarding final payment, The Owner shall make final payment for Project, and/or a phase of the Project to the CM. The CM shall then make all remaining payments, if any, due to Contractors. The CM shall ensure that all Contractors are paid on the Project and upon payment of any part or parcel thereof, obtain the appropriate lien waivers from Contractors, supplies, materialmen, labors, or any other person provided labor or supplies on the Project. Nothing in this paragraph shall modify any retainage rights of the Owner, as provided for elsewhere in this Agreement.

For the purposes of this Agreement "final completion" shall meanhe point where the Project, or any phase thereof, has been constructed in accordance with the Contract Documents. all corrective or "punch list" items have been completed to the satisfaction of the Owner, and is fully operational for its intended purpose. "Final acceptance" shall mean the date which the Owner accepts the Project, or any phase thereof, as finally complete. For clarification , a Certificate of Final Completion shall be issued at (1) completion of each phase of he Project. and (2) completion of the overall Project. Accordingly, there shall be final acceptance by the Owner for (1) each phase of the Project. and (2) upon completion of the overall Project. A Certificate of Final Completion or final acceptance by the Owner of a phase of the Project shall not in any way constitute an acceptance of the overall Project.

3.5.2 Time Management

3.5.2.1 Schedule The CM shall adjust and update the Schedule and distribute copies to the Owner and Designer.

3.5.2.2 Contractor's Construction Schedule

The CM shall verify that each Contractor strictly adheresb the completion dates established by each Contractor pursuant to each Contractor's Construction Schedule and that each Contractor complies with the requirements of the Schedule

3.5.3 Cost Management

3.5.3.1 Schedule of Values (Each Contract)

The CM shall determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for the allocation of the Construction Contract price to the activities shown on the Contractor's Construction Schedule.

3.5.3.3 Change Order Control

The Designer. in consultation with the CM, shall establish and implement a change order control system.

3.5.3.3.1 All proposed Owner/Designer-initialed change orders shall first be described in detail in writing by the Designer to the CM accompanied by technical drawings and specifications. In response to the Change Proposal Request, the CM. in consultation with the Contractor. shall submit detailed information concerning the costs and lme adjustments, if any, necessary to perform the proposed change order work. The CM shall determine the basis for the cost and time to perform the Work and, as applicable, the effect, if any, on the Guaranteed Maximum Price. The CM shall present its findings to the Designer, who shall, in turn, make the appropriate recommendation to the Owner. The Designer shall prepare the change order documents for signature by the CM and Owner.

3.5.3.3.2 The CM and the Designer shall review the contents of all Contractor-requested changes to the contract lime or price, endeavor to determine the effect, if any, on the Guaranteed Maximum Price. The CM shall provide the Designer a copy of each change request, and the CM shall. in its evaluations of the Contractor's request, consider the Designer's comments regarding the proposed changes. The Designer shall present its findings to the Owner regarding the proposed changes and at the Owner's direction, shall prepare the change order documents for signature by the CM and Owner. Upon execution of the change order documents between the CM and Owner, the CM shall prepare change order documents for signature by the affected Contractor.

3.5 3.4 Cost Records

In instances where a lump sum or unit price is not determined prior to performing Work described in a request for proposal as provided in Paragraph 3.5.3.3, the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments b subcontractors incurred by the Contractor in performing the Work. Notwithstanding the foregoing, all reasonable efforts shall be made to establish a set price for any change order prior to the implementation thereof.

3.5.3.6 Progress Payments

The Designer shall review the payment applications submitted by the CM and determine whether the amount requested reflects the progress of the work completed on the Project, or any phase thereof. The Designer shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report. The report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate of payment that shall be signed by the CM and Designer and delivered to the Owner. No progress payments will be approved except at either regular meeting of the Owner, a special meeting of the Owner called, in part for that purpose, or unless otherwise specifically authorized in writing by the Owner. The CM shall make payments that are due to all contractors, suppliers, and material men within twenty (20) days following the receipt of payment for the work from the Owner. Unless otherwise consented to in writing by the Owner, the period covered by each progress payment application shall be one (1) calendar month ending on the last day of the month. In addition, the CM shall keep the Project and the site on which Work is performed free and clear of all liens and claims from Contractors, subcontractors, or suppliers.

3.5.3.7 Retainage

The Owner will retain a portion of any progress payments made to the CM as follows.

Until such time as the total value of the Work completed on any Contract Package between the CM and a Contractor has progress to fifty percent (50%) of the total Contract Package costs, the Owner shall withhold ten percent (10%) from any progress payment. When the value of the work completed has progressed to fifty percent (50%) of the total Contract Package costs, and in the Owner's sole opinion satisfactory and quality of work is being maintained, the Owner may elect, in its sole discretion, not to withhold any additional retainage for the remainder of the Contract Package. The withheld ten percent (10%) of the initial fifty percent (50%) of the value of the work shall be retained until final payment on the Contract Package If the Owner determines that the overall Contract Package is substantially complete and is satisfied with the quality of work completed to date, retainage may be reduced to the amount necessary to assure completion, so long as the surety furnishing the CMs required bonds consent to such reduction in writing.

Upon receipt of an application for final payment of any Contract Package of the Project by a Contractor, the CM shall notify the Owner regarding the same. Subject b the other terms of this Agreement concerning final payment, the Owner shall make sufficient monies available to compensate the CM in order to pay the Contractor the final amounts due on any Contract Package of the Project. This shall not affect the amounts retained by the Owner as they relate to the CM's progress payments made hereunder, as provided below.

NOTWITHSTANDING THE FOREGOING, to ensure that the CM fully performs all of its obligations under this Agreement, the CM and the Owner agree that the Owner may retain from the amount due to the CM on the overall Project 1% percent of the Guaranteed Maximum Price. Unless reduced at the Owner's sole option, these amounts shall be retained until such time as the overall Project has been finally completed and finally accepted by the Owner, and shall be paid to the CM in the same manner as other final payments.

For the purposes of this paragraph, "Contract Package" shall mean any separate contract awarded to a Contractor for any phase of the Project.

Final Payment on the Project. or any phase thereof, shall be subject to the requirements provided in Paragraph 3.5.1.10. above.

3.5.3.8 Timing of Payment.

The CM understands that portions of the overall Project are being paid by the Owner through a loan with the Colorado Water Resources and Power Development Authority. Accordingly, the owner may first submit application for any progress payment to the Colorado Department of Public Health and Environment for either reimbursement of the Owner or direct payment to the CM. Upon submission of a progress payment application from the CM, the Owner may require Board approval prior to submission of any invoice to the State of Colorado. Owner shall use its best efforts to make any progress payment due hereunder in a timely manner. but in no event shall any progress payment due hereunder be paid to the CM later than thirty (30} days from receipt of the progress payment application. Payments due to the CM that are unpaid for more than thirty (30) days from the due date of the CM's invoice shall bear interest at the annual rate of 8% from the due date, compounded monthly so long as CM is not in violation of the terms of this agreement or owner is not withholding funds pursuant to this Agreement.

3.5.3.9 Payments Withheld

The Owner has the right to withhold any progress payment or final payment on the following circumstances:

(1} Defective work not remedied by the CM or a Contractor;

(2} Claims filed against the Project or reasonable evidence indicating the probable filing of claims;

(3) Failure of the CM to make payment properly to Contractors or for material and labor; and

(4) A reasonable doubt that the Project can be completed for the balance of the total Project costs then unpaid.

3.5.4 Management Information System (MIS)

3.5.4.3 Project and Construction Budget Revisions

The Designer. in consultation with the CM, shall make recommendations to the Owner concerning construction changes that may result in revisions to the Project and Construction Budget or Guaranteed Maximum Price.

3.5.4.6 Change Order Reports

The Designer, in conjunction with the CM, shall periodically prepare and distribute change order reports during the Construction Phase. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the CM may be aware.

3.5.4.7 Contractor's Safety Program

The CM shall review the safety programs of each Contractor and confirm that each Contractor has established safety programs as required by the Contract Documents. Notwithstanding, it shall be the CM's responsibility and duty under this Agreement to ensure that, at all limes during construction of the Project, the CM and each Contractor conduct their activities in a safe manner. Without limitation. the CM and each Contractor shall be subject to and conduct their activities in accordance with the Williams-Steiger Occupational Safety and Health Act of 1970. slate law concerning health and safety, and any federal of state regulation governing the same.

3.6 Post Construction Phase

3.6.1 Project Management

3.6.1.1 Record Documents

The CM shall coordinate and expedite submittals of information for preparation of record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the Designer.

3.6.1.2 Organize and Index Operations and Maintenance Materials

Prior to final completion of the Project the CM shall compile manufacturers' operations and maintenance manuals. warranties and guarantees and bind such documents in an organized manner. This information shall then be provided to the Designer for review and revision Upon review and revision by the Designer, such information shall be delivered to the CM for implementation of appropriate modification, and then provide to the Owner.

3.6.3 Cost Management - Not Used

3.6.4 Management Information System (MIS) - Not Used

3.7 Additional Services

3.7.1 At the request of the Owner, the CM shall perform the following Additional Services. Additional Services may include:

3.7.1.1 Services related to investigation, appraisal, or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by the Owner;

3.7.1.2 Services related to procurement, storage, maintenance and installation of Owner-furnished equipment, materials, supplies and furnishings;

3.7.1.6 6 Preparation of an Operations and Maintenance Manual:

3.7.1.7 Performance of warranty inspections during the warranty period of the Project;

3.7.1.8 Services made necessary by the failure to perform by or bankruptcy of a Contractor; and

3.7.1.9 Preparation for and serving as a witness in connection with any public or private hearing or arbitration mediation or legal proceeding.

ARTICLE 4
DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

4.1 The duration of the CM's Basic services under this Agreement shall be TO BE DETERMINED consecutive calendar days from the commencement date.

4.1.1 The commencement date for the CM's Basic Services shall be the date of execution of this Agreement by the Owner as stated herein or the date on which the Owner issues to the CM a written instruction to proceed with Basic Services, whichever is earlier.

4.1.2 The CM's Basic Services shall be performed for the periods of time indicated in this Agreement. If portions of design and construction occur simultaneously, some of the phase durations may overlap.

4.1.2.1 The CM's Basic Services during the Procurement Phase shall be performed concurrently with the construction phase.

4.1.2.2 The CM's Basic Services during the Construction Phase shall be performed for a period of 425 consecutive calendar days.

4.1.3 3 The CM's Basic Services during the Post-Construction Phase shall be performed for a period of 25 consecutive calendar days, commencing on the date of final acceptance of the completed Project; provided, however, that upon completion of any phase of the Project, the CM shall perform all necessary Post-Construction services relating to the completed phase.

4.2 Liquidated Damages.

It is mutually agreed to by the parties that under this Agreement, lime is of the essence. If the CM does not complete its services provided for under this Agreement within the time periods provided for in the preceding paragraphs of this Article 4, respectively (after allowance for any extensions granted by the Owner as provided for elsewhere in this Agreement}, the CM shall pay to the Owner as liquidated damages, and not as a penalty, the amount of five hundred dollars ($500.00} per day for each calendar day the CM is in default. The Owner shall have the right to deduct the liquidated damages then due from any monies due the CM, or to bring legal action against the CM to obtain the liquidated damages stipulated hereunder. This remedy shall not be the Owner's exclusive remedy under this Agreement ;the Owner is also entitled to any of the other remedies provided elsewhere in this Agreement or which would otherwise be available to Owner

ARTICLE 5
CHANGES IN THE CONSTRUCTION MANAGER'S BASIC SERVICES AND ADDITIONAL COMPENSATION

5.1 Owner Changes

5.1.1 The Owner, without invalidating this Agreement, may make changes in the CM's Basic Services specified in Article 3 of this Agreement. The CM shall promptly notify the Owner of changes which increase or decrease the CM's compensation, the duration of the CM's Basic Services, or both.

5.1.2 Additional Compensation and Extended Duration

The CM shall be entitled to receive additional compensation and additional time when the scope of Basic Services is increased or extended through no fault of the CM. If the scope of Basic Services is increased or the duration of the CM's Basic Services is extended or the duration of the Basic Services to be performed within a phase duration specified in Article 4 is extended, the CM shall be entitled to receive additional compensation, and the duration of the Agreement shall be extended. A written request for additional compensation shall be given by the CM to the Owner within thirty (30) days of the occurrence of the event giving rise to such request. The amount of additional compensation to be paid and the amount of extension of the duration of this Agreement shall be determined on the basis of the CM's cost, a customary and reasonable adjustment in the CM's lump sum fee consistent with the provisions of Article 7, and a determination of the length of the extensions of the duration of this Agreement.

5.1.3 Changes in the CM's Basic Services

Changes in the CM's Basic Services and entitlement to additional compensation shall be made by a written amendment to this Agreement executed by the Owner and the CM. The amendment shall be executed by the Owner and CM prior to the CM performing the services required by the amendment. The CM shall proceed to perform the services required by the amendment only after receiving notice directing the CM to proceed.

5.1.4 Payment of Additional Compensation

The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

ARTICLE 6
OWNER'S RESPONSIBILITIES

6.1 The Owner shall provide to the CM complete information regarding the Owner's requirements for the Project.

6.2 The Owner shall examine information submitted by the CM and shall render decisions thereto promptly.

6.3 The Owner shall furnish design, legal, accounting and insurance counseling services as may be necessary for the Project.

6.4 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the Owner shall give prompt written notice thereof to the CM.

6.5 The Owner shall furnish required information and approvals and perform its responsibilties and activities in a timely manner to facilitate orderly progress of the Work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the project as determined by the Project.

6.6 The Owner has retained a Designer whose services, duties and responsibilities shall be described in a written agreement between the Owner and Designer. The services, duties, and responsibilities of the Designer set out in the agreement between the Owner and Designer shall be compatible and consistent with this Agreement and the Contract Documents. The Designer shall perform its services in cooperation with the CM consistent with this Agreement. If the terms and conditions of the agreement between the Owner and the Designer are changed the CM shall be notified of the changes.

6.7 The Owner shall approve the Project and Construction Budget prepared by the Designer. A copy of the Project and Construction Budget shall be provided to the CM.

6.8 If the Owner contracts separately with any other parties, the Owner shall cause all such agreements to be compatible and consistent with this Agreement.

6.9 At the request of the CM, sufficient copies of interim and final drawings, specifications and Contract Documents shall be furnished to the CM by the Owner at the Owner's expense.

Except as otherwise provided in this Agreement, the Owner shall, in a timely manner, secure and pay for necessary easements and any county and state permitting obligations.

6.10 The Owner shall furnish evidence satisfactory to the CM that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, the CM is not required to commence its services and may, if such evidence is not presented within a reasonable time, suspend the services specified in this Agreement upon fifteen (15) days written notice to the Owner and in such event, the CM shall be compensated in the manner provided in Article 9.2.

6.11 So long as the CM is not in default of this Agreement, the Owner, its representatives and consultants, including Designers, shall communicate with the Contractors only through the CM. If, however, the CM fails to communicate with the Contractors upon a specific request made by either the Designer or the Owner regarding a specific issue, the Designer and Owner may directly communicate with the Contractor in question. NOTWITHSTANDING THE FOREGOING, pursuant to the agreement between the Owner and the Designer, the Designer will maintain an inspector on-site during construction of the Project. In performance of the inspection duties, the prohibition provided in this paragraph shall not apply; provided, however, that said inspector shall make a good faith effort to coordinate his inspection duties with the CM and shall report any adverse finding during inspection to the CM.

6.12 The Owner shall send to the CM and shall require the Designer to send the CM copies of all relevant notices and communications sent to or received by the Owner or Designer relating to the Project. This requirement shall not apply to notices or communications between the Designer and the Owner, nor shall it apply to any communication protected by the attorney-client privilege of either party.

6.13 The Owner shall designate, in writing, an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the Project. This representative shall have the authority to approve changes in the scope of the project and shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner. Notwithstanding any changes which are considered, in the discretion of the Owner's representative, substantial or which involve an increase of the total Project costs shall be approved only by a majority vote of the Owner, at any regular or special meeting, duly noticed in accordance with Colorado law.

6.14 The Owner shall make payments to the CM based on payment applications that are certified by the Designer and on the basis of the CM's invoices for its services performed, less any amounts retained.

ARTICLE 7
COMPENSATION FOR CM SERVICES AND PAYMENT

7.1 Guaranteed Maximum Price

7.1.1 The Owner hereby requests the CM to propose a Guaranteed Maximum Price for the entire Project, including any phase thereof. The Guaranteed Maximum Price shall be documented by the CM as defined in Article 12 and, once established, the Guaranteed Maximum Price shall be subject to modification only as defined in this Agreement.

7.1.1.1 The Guaranteed Maximum Price shall be submitted to the Owner not more than sixty (60) days after, the later event; completion of the Project 60% drawings or the execution of this Agreement for the Guaranteed Maximum Price. The Owner shall accept such Guaranteed Maximum Price within fifteen (15) days of the date of the receipt unless such time is mutually agreed to be extended. If the Owner does not accept the Guaranteed Maximum Price within the time period herein provided, such price shall be presumed to be rejected by the Owner.

7.1.1.2 In the event the Owner does not accept the CM's proposed Guaranteed Maximum Price and/or elects not to go forward with the Project, this Agreement shall terminate and the CM shall be compensated only in accordance with Task Order No. 1.7.1.1.3.4 In the event that the Guaranteed Maximum Price is accepted by the Owner within the time stipulated herein, the applicable sections of Article 12 of this Agreement shall be completed and initialized by both parties to this Agreement and the CM shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the CM's Basic Services.

7.1.1.4 Construction contracts for the Work required for the Project shall be between the CM and Contractors. The CM, with the assistance of the Designer, shall request and receive bids for each contract and shall advise the Owner with respect to award of a contract to the lowest responsive and qualified bidder The CM shall enter into a contract with that bidder within thirty (30) days after review by the Owner

7.1.1.5 The CM shall be eligible to perform work on the Project. Should the CM elect to do so. and if. and only if. the Owner determines that the CM can perform the work for an amount less than the lowest responsive and qualified bid received pursuant to the public bidding process. In the event that the CM is determined to be the lowest responsive and qualified bidder on such work, the Owner shall approve award to the CM and shall enter into a separate contract with the CM for that work.

7.1.1.6 The Guaranteed Maximum Price is the total cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor. equipment. supplies. materials, services and allowances to complete the project. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the CM as part of the Guaranteed Maximum Price documentation, in accordance with Paragraph 12.1.2. and appended hereto.

7.1.1.7 The Guaranteed Maximum Price shall include those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any increase or decrease in taxes that affect the Guaranteed Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that price by change order. except as are provided for in this Agreement (or allowed by law).

7.1.1.7 The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Paragraph 7.1.3.

7.1.2 Cost of the Project

The term "cost of the Project" shall include all amounts paid by the Owner to the CM for payment to all separate Contractors, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including general conditions items as well as the fee charged by the CM for its services on the Project, said fee which shall be included as a separate line item in the Guaranteed Maximum Price

7.1.2.1 The cost of the Project shall not include the following:

7.1.2.1.1 All professional fees paid by the Owner to the Designer or other consultants retained directly by the Owner;

7.1.2.1.2 All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner and outside the scope of the Guaranteed Maximum Price;

7.1.2.1.3 All Additional Services costs as defined herein; or

7.1.2.1.4 All other costs not within the control of the CM or identified as being not within the Guaranteed Maximum Price.

7.1.2.2 The cost of the Project may be further defined in the documentation required by Paragraph 12.1.2 of this Agreement. If the requirements of this Paragraph 7.1.2 and the documentation required by Paragraph 12.1.2 differ, then the CM shall identify and explain the difference. but the documentation provided in accordance with Paragraph 12.1.2 shall be the basis for determining the scope of the Guaranteed Maximum Price.

7.1.3 Adjustments to the Guaranteed Maximum Price

The CM understands. confirms and agrees that its responsibility hereunder is to construct the Project in accordance with the drawings and specifications . It is recognized that the Guaranteed Maximum Price may be determined based upon incomplete design documents and in those instances in which the drawings and specifications are not complete at the time the Guaranteed Maximum Price is established, the CM shall exercise reasonable care and judgment to determine the intent of the design and shall calculate the Guaranteed Maximum Price on the basis of the quality of construction , materials, and finishes that can be reasonably inferred from the design documents or other specified sources. The CM shall determine unit prices and the cost of the Project and shall make those assumptions regarding the project scope and the quality of the intended construction as may be necessary to fully document the Guaranteed Maximum Price. The Owner and CM shall use the documentation specified in Paragraph 12.1.2 in determining whether or not the scope of the Project or a part thereof has been changed and in determining entitlement to an adjustment to the Guaranteed Maximum Price. A determination regarding all requests for adjustment to the Guaranteed Maximum Price shall be made in writing within thirty (30) days from the date of a written request for an adjustment.

7.1.3.1 The amount of adjustment to increase or decrease the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:

7.1.3.1.1 By mutual acceptance of a lump sum, properly itemized and supported by cost data: or

7.1.3.1.2 By unit prices defined and listed in Exhibit __ or

7.1.3.1.3 If neither of the methods set forth in 7.1.3.1.1 or 7.1.3.1.2 is agreed upon by the Owner, the CM provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the cost records for the changed work. Choice of this method shall not restrict the Owner or the CM from submitting the matter to mediation as to the justification or right of the CM to an increase in the Guaranteed Maximum Price due to such work. In such case, the CM shall keep and present in such form as may be agreeable to the Owner an itemized accounting together with appropriate supporting data of the actual cost of the Project.

7.1.3.2 If the unit prices are stated and if the quantities originally contemplated by the CM are so changed in a proposed change order or as a result of several change orders that application of the agreed unit prices to the quantities or work proposed cause substantial inequity to the Owner or the CM, the applicable unit prices and Guaranteed Maximum Price shall be adjusted.

7.1.3.3 Should concealed or unknown physical conditions be encountered that differ materially from those identified in the drawings or specifications. the Guaranteed Maximum Price and the completion date shall be adjusted upon claim made by either party to this Agreement within ten (10) calendar days after the first observance of the conditions.

7.1.3.4 The Designer shall have the authority to order minor changes in the Project consistent with the intent of the drawings and specifications and not involving an adjustment in the Guaranteed Maximum Price or change of the construction completion date. Such changes may be affected by written order only and shall be signed by the Owner and the CM prior to the work being performed.

ARTICLE 8
INSURANCE AND MUTUAL INDEMNITY

8.1 CM's Liability Insurance

8.1.1 The CM shall purchase and maintain such insurance that shall protect the CM from the claims set forth below that may arise out of or result from the CM's performance of services pursuant to this Agreement and any agreement entered into between the CM and a Contractor:

8.1.1.1 Claims under Workers' Compensation. disability benefits and other similar employee benefits acts that are applicable to the Work performed in the amounts required by law (verification of such coverage shall be provided to the Owner);

8.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease or death of CM's employees under applicable employer's liability law in the amounts required by law (verification of such coverage shall be provided to the Owner);

8.1.1.3 Claims for damages because of bodily injury or death of any person other than CM's employees;

8.1.1.4 Claims for damages insured by usual personal injury liability coverage that are sustained by any person as a result of an offense directly related to the employment of such person by the CM or by any other person.

8.1.1.5 Claims for damages, other than to the Work itself. because of injury to or destruction of tangible property, including loss or use therefrom; or

8.1.1.6 Claims for damages because of bodily injury or death of any person or property damage arising out of ownership, maintenance or use of any motor vehicle.

8.1.2 The CM's commercial general and motor vehicle liability insurance. as required by Paragraph 8.1.1, shall be written for not less than the following limits of liability:

a. Commercial General Liability

1. Personal Injury:
$1,000,000.00 Each Occurrence
$2,000,000.00 Aggregate

2. Property Damage:
$1,000,000.00 Each Occurrence
$2,000,000.00 Aggregate

b. Commercial Motor Vehicle Liabilty

1. Bodily Injury:
$500,000.00 Each Person
$1,000,000.00 Each Occurrence

2. Property Damage:
$1,000,000.00 Each Occurrence

c. Excess Umbrella Policy

In addition to the insurance required above, the CM shall have in place an excess umbrella insurance policy in the amount of $5,000,000.00.

8.1.3 Commercial general liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

8.1.4 The foregoing policies shall contain a provision that coverages afforded under the policies shall not be cancelled or expire until at least thirty (30) days written notice as been given to the Owner and shall include a liability endorsement covering this Agreement or an endorsement making the Owner an additional insured under the policies. Certificates of Insurance showing such coverages to be in force shall be filed with the Owner prior to commencement of the CM's services.

8.2 Builder's Risk Insurance

8.2.1 The Owner shall be responsible for purchasing and maintaining insurance and any associated deductible to protect the Project from perils of physical loss. The insurance shall include as named insureds the Owner, the Designer, the CM, the Contractors and their subcontractors and shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due b theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, defective design, negligent workmanship or defective material.

8.3 Property Insurance

8.3.1 If the Project includes as addition to or is adjacent to an existing structure, the Owner shall maintain Owner's property insurance covering such structure and its contents throughout the Project.

8.3.2 If the Owner occupies or uses a part or parts of the Project prior to substantial completion thereof, such occupancy shall not occur until the Owner obtains property insurance for the structure.

8.4 Notices and Recovery

8.4.1 The Owner and CM each shall provide the other with copies of all policies thus obtained for the Project. Each party shall provide the other with sixty (60) days notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

8.5 Waiver of Subrogation

8.5.1 The Owner and the CM waive all rights against each other and against the Contractors, the Designer, and consultants, agents and employees of the other for damages occurring during construction and covered by any property insurance required for this Project. The Owner and the CM shall each require appropriate similar waivers from their contractors, designers, consultants and agents.

8.6 Performance Bond and Payment Bond

8.6.1 The CM shall furnish bonds covering faithful performance of this Agreement and payment of the obligation arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the entire cost of the Project, including the Guarantee Maximum Price and the cost of the basic services hereunder.

8.6.2 The CM shall deliver the required bonds to the Owner at least three (3) days before the commencement of any work at the Project site.

8.7 Indemnity

8.7.1 To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, its employees, agents, officers, directors and partners from and against any and all damages arising from bodily injury or property damage and reasonable attorneys' fees incurred by the Owner caused solely by the negligent act, error or omission of the CM, or any other party for whom the CM is legally liable, in performance of services under this Agreement, other than the work itself. The

CM shall procure and maintain insurance as required by and set forth in this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of the CM and its officers, directors, partners, employees, and agents to the Owner and anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause or causes, including but limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty (express or implied) of the CM and its officers, directors, partners, employees and agents, (hereafter "the Owner's claims"), shall not exceed the total available insurance proceeds available to be paid by the CM's insurers in settlement or satisfaction of he Owner's claims under the terms and conditions of the CM's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense and appeal}.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of the CM and its officers, directors, partners, employees, and agents to the Owner and anyone claiming by, through or under the Owner, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any cause or causes, including but limited b the negligence, professional errors or omissions, strict liability or breach of contract or warranty (express or implied) of the CM and its officers, directors, partners, employees, and agents, (hereafter "the Owner's claims"), shall not exceed the total available insurance proceeds available to be paid by the CM's insurers in settlement or satisfaction of the Owner's claims under the terms and conditions of the CM's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense and appeal).

8.7.3 Deleted

8.7.4 The CM shall cause the Contractor to indemnify and hold harmless the Owner, CM and Designer from and against any and all claims, demands, suits, damages, including consequential damages (including reasonable attorneys fees), and damages resulting from personal injury or property damage, costs, and expenses and fees that are asserted against the Owner, CM and the Designer and that arise out of or result from negligent acts or omissions or the breach of the Construction Contract by the Contractor, its employees, agents and representatives in performing the Work.

ARTICLE 9
TERMINATION AND SUSPENSION

9.1 Termination

9.1.1 This Agreement may be terminated by the Owner, in its discretion, after seven (7) days written notice to the CM.

9.1.2 This Agreement may be terminated by either party hereto upon a default of the other party in the performance of any term, covenant or condition of this Agreement, which default continues and is not cured for a period of seven (7) days after written notice specifically setting forth the nature of the alleged default has been given by non-defaulting party to the defaulting party, or if more than seven (7) days is reasonably required to cure such matter complained of, if the defaulting party fails to commence to correct the same within said seven (7) day period or thereafter fails to prosecute the same to completion with reasonable diligence. In addition, if the Project in whole or substantial part is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, this Agreement may be terminated in writing by either party.

9.1.3 In the event of termination pursuant Paragraph 9.1.1, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due, direct expenses and all termination expenses. Termination expenses are defined as those expenses arising prior, during and subsequent to termination that are directly attributable to the termination, plus an amount computed as a percentage of the total fixed fee as defined below;

If Owner terminates this agreement after commencement of construction and prior to 50% completion the CM shall be paid - thirty percent (30%) of the remaining balance of the fixed fee.

If Owner terminates this agreement after 50% completion and prior to 100% completion the CM shall be paid forty percent (40%) of the remaining balance of the fixed fee.

9.2 Suspension

9.2.1 The Owner may order, in writing, the CM to suspend all or any part of the CM's services for the Project for the convenience of the Owner or for work stoppage beyond the control of the Owner or the CM. If the performance of all or any part of the services for the Project is suspended, an adjustment in the CM's compensation shall be made for the increase, if any, in the cost of the CM's performance of this Agreement caused by such suspension and this Agreement shall be modified in writing accordingly.

9.2.2 If the Project is suspended by the Owner for more than three (3) months, the CM shall be paid compensation for services performed prior to receipt of written notice from the Owner of such suspension, together with direct expenses then due and all expenses and costs directly resulting from such suspension. If the Project is resumed after being suspended for more than six (6) month, the CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 10
DISPUTE RESOLUTION

10.1 Mediation/Litigation

10.1.1 Mediation. Except in the case of an emergency involving the health or safety of the parties, their respective constituents, owners, officers, board members, or employees, if there is any claim, dispute, or controversy arising out of or relating to the Project or to this Agreement or the breach thereof, the parties hereto shall first proceed in good faith to submit this matter to non-binding mediation. The parties shall jointly appoint an acceptable mediator and will share equally in the cost of such mediator. This mediation requirement unless otherwise agreed to in writing, shall terminate in the event the entire dispute is not resolved within thirty (30) days of the date written notice requesting mediation is sent by one party to the other party. The mediation requirement provided in this paragraph shall not alter any other obligations or performance timelines provided for in this Agreement.

10.1.2 Litigation. Subject to the mediation provision provided in 10.1.1 all claims, disputes or controversies arising out of or relating to the Project or to this Agreement or the breach hereof shall be brought before the District Court of Larimer County, Colorado , said Court shall have exclusive jurisdiction and venue over any such action of law, suit and equity, or judicial proceeding concerning the Project or this Agreement. Except as otherwise provided by Colorado statute or any other provision of this Agreement specifically pertaining to the same, in any such action of lawsuit and equity, or judicial proceeding between the parties concerning the Project or this Agreement ,each party shall bear their own costs and expenses, including their respective attorneys' fees

ARTICLE 11
ADDITIONAL PROVISIONS

11.1 Confidentiality

11.1 The CM will keep all information designated and marked by the Owner as "Confidential" and concerning the Project confidential, except for communications incident to completion of the Project between the CM, Designer, and Contractor, and their independent professional engineers, architects and other consultants and subcontractors, and except for publicity approved by the Owner and communications in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.

11.2 Limitation and Assignment

11.2.1 The Owner and the CM each bind itself, its successors, assigns, insurers, and legal representatives to the terms of this Agreement.

11.2.2 Neither the Owner nor the CM shall assign or transfer its rights or interest in this Agreement without the written consent of the other. However, nothing contained in this paragraph can prevent the CM from employing contractors or such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services and of the Work hereunder

11.3 Governing Law

11.3.1 This Agreement shall be governed by the law of the State where the Project is located. As more specifically provided in Article 10. the District Court of Clear Creek County, Colorado shall have exclusive jurisdiction and venue over any dispute arising hereunder.

11.4 Extent of Agreement

11.4.1 This Agreement represents the entire and integrated agreement between the Owner and the CM and supercedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by written instrument signed by both the Owner and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Designer are not intended third party beneficiaries of this Agreement. This Agreement does not, however. replace the rights, duties and obligations specifically provided for in the previously referenced Task Order No. 1.

11.5 Severability

11.5.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

11.6 Meaning of Terms

11.6.1 References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

11.6.2 The meaning of terms used herein shall be consistent with the definitions expressed in the CMAA Standard Form Agreements, Contracts and General Conditions.

11.7 Notices

11.7.1 Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered or sent by registered or certified mail. postage prepaid, addressed as follows:

To the Owner:
Town Administrator
PO Box 127
3735 Cleveland Avenue
Wellington, CO 80549
Telephone: 970-568-3381

To the CM:
Hydro Construction Company, Inc.
James E. Eurich, COO
77 NW Frontage Road
Fort Collins, CO 80524
Telephone: 970-225-2211. Fax: 970-225-2991

11.8 WARRANTY.

The CM warrants that all of the work, materials and equipment furnished or performed on the Project by either the CM or any of the awarded Contractors on the Project, is in conformance with the Contract Documents for the Project, or any phase thereof, including any related design specification, and that said work, equipment and materials are (a) free of defect, and (b) of good workmanship and/or quality. Furthermore, the CM warrants that materials and equipment furnished under the Project are new unless otherwise permitted under the Contract Documents or any design specification. Any work, materials and equipment not conforming with these requirements, including substitutions not properly approved and authorized, may be considered defective. The CM's warranty excludes remedy for damage or defect caused by abuse, modifications by the Owner not agreed to by the CM, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

11.9 Correction of Work.

If, at anytime during the term of this Agreement or within one (1) year after the date of substantial completion of the overall Project (or other period provided by law), any of the work, equipment or materials on the Project. including any work, equipment or materials provided by or done by a Contractor on the Project, is found to be defective or not in accordance with requirements of the Contract Documents for the Project, or any phase thereof, including any related design specification, the CM shall correct it promptly after receipt of written notice from the Owner, and at no additional cost to the Owner. Unless otherwise agreed to in writing, the CM shall proceed with corrective work within ten (10) days following the dale of any notice, and shall proceed with due diligence to perform all repairs and/or replacements in a satisfactory manner. Should the CM fail or refuse to proceed with the corrective work as stated above, the Owner may, at its option, and without further notice to the CM, arrange for such work to be done at the expense of the CM.

ARTICLE 12

SPECIAL GUARANTEED MAXIMUM PRICE PROVISIONS

12.1 <u>Guaranteed Maximum Price</u>

12.1.1 As of this ___ day of_______, 20___, pursuant to this Agreement and for the Project defined in Article 2, the Owner and the CM desire to set a Guaranteed Maximum Price for the Project.

12.1.2 Documentation of the Guaranteed Maximum Price shall be developed by the CM from the design drawings and specifications and such other documents as may be specified as follows:

The information required by this paragraph may be specified at the time of submission of the Guaranteed Maximum Price to the Owner for acceptance.

12.1.2.1 The documentation, includes budgeted amounts for each of:

Phase $0.00

priced divisions of the Work required for the Project and an amount of 0% designated as a contingency amount (the Contingency) for the use of the CM. The Guaranteed Maximum Price is for the total cost of the Project and not the cost for each or any division of the Project, unless otherwise specified.

12.1.2.2 The documentation shall be prepared by the CM and submitted to the Owner with the Guaranteed Maximum Price. The documentation may include drawings, sketches, specifications, calculations or other data used to identify the basis of the Guaranteed Maximum Price.

12.1.3 As the separate contracts, purchase orders or other fixed contract prices are obtained and are awarded for each of the separately priced divisions of he work required for the Project as shown in the Project and Construction Budget, the Guaranteed Maximum Price and the Project and Construction Budget shall be adjusted as follows:

12.1.3.1 If the cost of any division as awarded is less than the amount shown on the Project and Construction Budget, as determined in accordance with the terms of this Agreement, the amount indicated in the Project and Construction Budget for such item shall be reduced by an amount equal to the difference between such cost and the amount shown on the Project and Construction Budget for such item and the Contingency shall be increased by the same amount;

12.1.3.2 If the cost of any division is greater than the amount shown in the Project and Construction Budget to the extent that the Contingency is sufficient, the amount shown in the Project and Construction Budget for such item shall be increased by an amount equal to the difference between such cost and the amount shown in the Project and Construction Budget for such item and the Contingency shall be reduced by the same amount. The Guaranteed Maximum Price shall not be adjusted; and

12.1.3.3 If the Owner directs the CM to award a contract to a bidder other than the lowest qualified and responsive bidder for any portion of the Project, the Guaranteed Maximum Price shall be increased by the amount of the difference between the award price and the price submitted by the lowest qualified and responsive bidder. The Contingency shall not be changed;

12.1.3.4 The Guaranteed Maximum Price established for the Project is ______________________________________

______________________ dollars ($0.00)

This Guaranteed Maximum Price is for the work described in the documentation attached as Exhibit "A".

12.1.4 In the event that the cost of the Project exceeds the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the CM shall continue to perform at no additional cost to the Owner until the Project, defined by this Agreement and all Attachments hereto are completed. The CM shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Project, even if such amounts are in aggregate in excess of the Guaranteed Maximum Price.

12.1.5 If actual project costs are less than the stated Guaranteed Maximum Price. The difference in costs shall remain as property of the Owner.

12.1.6 In order to validate the Guaranteed Maximum Price the owner will select and hire an independent third party to perform an independent cost estimate (ICE). The CM shall participate in the ICE process. The CM shall provide to the independent cost estimator all documents required by Paragraph 12.1.2, in addition to the Guaranteed Maximum Price template or schedule of values. Upon completion of the ICE the CM shall participate in Guaranteed Maximum Price analysis and validation meeting; during which the ICE and Guaranteed Maximum Price will be compared. Should any line item, value or element of the Guaranteed Maximum Price and the ICE have a discrepancy of more the 5% the CM, independent cost estimator and owner shall reconcile the line item, value or element and ensure the discrepancy is reconciled to less than or equal to 5%.

[The remainder of this page is intentionally left blank)

This Agreement is executed the day and year first written above.

OWNER:

Title: Town Administrator

Attest:

CONSTRUCTION MANAGER:

Title: COO James E. Emery

Attest:

APPROVED AS TO CONTENT AND FORM:

DESIGNER:

Title:

Attest:

Title:

Attest:

TOWN OF WELLINGTON
3735 CLEVELAND AVENUE
P.O. BOX 127
WELLINGTON, CO 80549
PUBLIC WORKS (970) 568-0447
TOWN HALL (970) 568-3381

WELLINGTON WATER TREATMENT PLANT EXPANSION
CONSTRUCTION MANAGER AT-RISK

AMENDMENT ONE
TO
CONTRACT FOR SERVICES, GL No. 211-80-4010

Parties. The parties to this Amendment are the Town of Wellington, 3735 Cleveland Avenue, Wellington, Colorado 80549 (Town) and Hydro Construction Company, Inc., 77 NW Frontage Road, Fort Collins, CO, 80524 (Contractor).

Purpose of Amendment. This Amendment constitutes the first amendment to the Contract between the Town and the Contractor. The purposes of this Amendment are to append the State Revolving Fund (SRF) requirements that must be fulfilled during this project and to modify certain language in the Contract as stated below.

The original Contract, dated May 24, 2018, is for all services incidental to the construction management and administration of the improvements to the Wellington Water Treatment Plant (WTP).

Term of the Amendment. This Amendment shall commence upon the date the last required signature is affixed hereto (Effective Date) and shall remain in full force through the term of the Contract, as amended, unless terminated at an earlier date pursuant to the provisions of the Contract.

Amendment(s).

1. Append to the original Contract the Colorado State Revolving Fund Required Specifications (attached).
2. In the original Contract, Article 1, Section 12.2 (page 3): Replace “Stantec Consulting Services, Inc.” with “Jacobs Engineering Group.”
3. In the original Contract, Article 2, last paragraph (page 3): Replace the first sentence with, “This project is being funded through an SRF loan.”
4. In the original Contract, Article 4, Section 4.1 (page 9): Replace the entire section with, “The duration of the CM’s Basic Services and Construction Phase under this Agreement shall be from the commencement date through June 30, 2024.”
5. In the original Contract, Article 4, Section 4.1.2.2 (page 9): Delete entire section.
6. In the original Contract, Article 11, Section 11.3.1 (page 17): Replace “Clear Creek County” with “Larimer County.”

Amended Responsibilities of the Consultant. Responsibilities of the Consultant are subject to provisions stated in the Colorado State Revolving Fund Required Specifications (attached).

Amended Responsibilities of the Town. Responsibilities of the Town are subject to provisions stated in the Colorado State Revolving Fund Required Specifications (attached).

Entirety of Contract. The original Contract, consisting of twenty (20) pages and Amendment One, consisting of twenty-four (24) pages (including attachment) represent the entire and integrated Contract between the parties.

Signatures. The parties to this Amendment, through their duly authorized representatives, have executed this Amendment on the dates set out below and certify that they have read, understood, and agreed to the terms and conditions of this Amendment.

TOWN OF WELLINGTON

Signature	Date
Printed Name	Title

HYDRO CONSTRUCTION COMPANY, INC.

Signature	Date
Printed Name	Title

Colorado State Revolving Fund Required Specifications

Section 1

Davis Bacon Prevailing Wage Requirements

This contract is governed by the Davis Bacon and related Acts and is subject to General Decision Number _______________________dated _____________CO______________.
A copy of this General Decision Number is included as Exhibit____________of this document.

The SRF Program is subject to "Davis Bacon and Related Acts" or DBRA, which extends the requirements of the Davis-Bacon Act. Compliance with the Davis Bacon Act is required for any project funded by the Drinking Water Revolving Fund (DWRF) or Water Pollution Control Revolving Fund programs. Non-Compliance with the Davis Bacon Act may result in debarment and suspension from working on future projects funded with federal dollars for up to three years and/or loss of funding for the current project.

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I -5.

Attachment 1

Wage Rate Requirements under:

- **The Consolidated Appropriations Act, 2016 (P.L 114-133), or**
- **The Water Resources Reform and Redevelopment Act of 2014 (WRRDA):**

I. For Subrecipients that Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis - Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under The 2014 Act with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Breana Whittaker at whittaker.breana@epa.gov or at 303-312-6463 of EPA, Region 8 for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at www.dol.gov/whd/

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

Under The Consolidate Appropriations Act, 2016, or The Water Resources Reform and Redevelopment Act of 2014, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

   (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(1) While the solicitation remains open, the subrecipient shall monitor beta.sam.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(2) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor beta.sam.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from beta.sam.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or The 2014 Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof , regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, beta.sam.gov

(ii) (A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor , or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract . In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable , that the plan or program is financially responsible , and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week . The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program , who is not individually registered in the program , but who has been certified by the Office of Apprenticeship Training , Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval , evidenced by formal certification by the U .S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate , and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U .S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor , or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act , which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics , including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of non compliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at: www.dol.gov/whd/index.htm

American Iron and Steel

The State Revolving Fund Program is subject to, and requires compliance with, the American Iron and Steel requirement. American Iron and Steel requires Water Pollution Control State Revolving Fund (WPCRF) and Drinking Water Revolving Fund (DWRF) assistance recipients use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed on or after January 17, 2014.

In providing bids, proposals, or services, the Contractor represents and warrants to and for the benefit of the borrower and the State that:

a. The Contractor has reviewed and understands the American Iron and Steel requirement.

b. All of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved.

c. The Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the borrower or the State.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the borrower or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the borrower or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the borrower). While the Contractor has no direct contractual privity with the State, as a lender to the borrower for the funding of its project, the borrower and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of the Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

For purposes of the WPCRF and DWRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials

If the subrecipient can justify a claim made under one of the categories below, a waiver may be granted. Until a waiver is granted by the EPA, the AIS requirement must be adhered to as described in the act.

A waiver may be provided if EPA determines that:

1. Applying these requirements would be inconsistent with the public interest.
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

All waiver requests must be routed through the Grants and Loans unit project manager or compliance specialist.

EPA's guidance on AIS requirements, available at http://water.epa.gov/grants_funding/aisrequirement.cfm, includes specific instructions for communities interested in applying for a waiver. After receiving a completed application for a waiver from the grants and loans unit, EPA will publish the waiver request and all material submitted with the application on this website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to the EPA.

Approved National Waivers available for borrowers and contractors include:

- April 15, 2014 De Minimis Waiver:

"The EPA is hereby granting a nationwide waiver pursuant to the American Iron and Steel requirements of P.L. 113-76 CAA 2014 (Act), section 436 under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects. This action permits the use of products when they occur in de minimis incidental components of such projects funded by the Act that may otherwise be prohibited under section 436(a). Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the material used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of materials used in and incorporated into a project."

For more information on approved waivers visit the following website:
http://water.epa.gov/grants_funding/aisrequirement.cfm

Section 3

National Term on Suspension and Debarment

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for $25,000 or more.

The status of prospective individuals or organizations can be checked at http://www.sam.gov. It is the prime contractor's responsibility to verify that subcontractors, vendors, suppliers and manufacturers are not on the excluded parties list.

Section 4

Disadvantaged Business Enterprise (DBE) - SRF Program Grant Agreement Information and Requirements

This Section is Not Applicable to this Project. Remainder of page intentionally left blank.

Section 5

Equal Employment Opportunity and Affirmative Action Requirements on Federally Assisted Construction Contracts

A. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

This notice shall be included in, and shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts.

(1) The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

(2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

County	Minority Participation in Each Trade[1]	Female Participation in Each Trade[1]
Fort Collins, Larimer	6.9%	6.9%

1) Source: FR Vol.45 No. 194 / Friday, October 3, 1980

These goals are applicable to all the contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non- federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(3) The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number for the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed (See Form C).

(4) As used in this Notice, and in the contract resulting from this solicitation, the covered area is Larimer County.

B. EQUAL OPPORTUNITY CLAUSES

(1) The Equal Opportunity Clause published at 41 CFR Part 60-1.4(b) is required to be included in, and is part of, all nonexempt federally assisted construction contracts and subcontracts. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated.

(2) In addition to the clauses described above, all federal contracting officers, all applicants, and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all federal and federally assisted construction contracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to 41 CFR 60-4.6 of this part and in construction subcontracts in excess of $10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive Order.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

A. DEFINITIONS AS USED IN SPECIFICATIONS

(1) "Covered Area" means the geographical area described in solicitation from which this contract resulted;

(2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(3) "Employer identification number" means the Federal Social Security number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(4) "Minority" includes:

(a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asian, the Indian Subcontinent, or the Pacific Islands);

(d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

B. DETAILED SPECIFICATIONS

(1) Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $25,000 the provisions of these specifications and the Notice which contains the applicable

goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(2) If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area, (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(3) The contractor shall implement the specific affirmative action standards provided in paragraphs (6)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably by able to achieve in each construction trade in which it has employees in the covered area. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(4) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(5) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(6) The contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific

b. Attention to minority or female individuals working at such sites or in such facilities.

c. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations where the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

d. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

e. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

f. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.

g. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

h. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

i. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

j. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations servicing the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

k. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

l. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

m. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

n. Ensure that seniority practices, job classification, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations are followed.

o. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

p. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

q. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

(7) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (6)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (6)(a) through (p) of the specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

(8) A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the order if a specific minority group of women is under-utilized).

(9) The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(10) The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

(11) The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall

be in violation of these specifications and Executive Order 11246, as amended.

(12) The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (6) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.3.

(13) The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(14) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 6

Williams Steiger Occupational Safety and Health Act of 1970

A. Authority

(1) The contractor is subject to the provisions of the Williams-Steiger Occupational Safety and Health Act of 1970.

(2) These construction documents and the joint and several phases of construction hereby contemplated are to be governed, at all times, by applicable provisions of the Federal law(s), including but not limited to the latest amendment of the following:

a. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 94-596;

b. Part 1910 - Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;

c. Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations.

B. Safety and Health Program Requirements

(1) This project, its prime contractor and its subcontractors, shall at all times be governed by Chapter XVII of Title 29, Code of Federal Regulations, Part 1926 - Safety and Health Regulations for Construction (29 CFR 22801), as amended to date.

(2) To implement the program and to provide safe and healthful working conditions for all persons, general project safety meetings will be conducted at the site at least once each month during the course of construction, by the construction superintendent or his/her designated safety officer. Notice of such meeting shall be issued not less than three (3) days prior, stating the exact time, location, and agenda to be included. Attendance by the owner, architect, general foreman, shop steward(s), and trades, or their designated representatives, witnessed in writing as such, shall be mandatory.

(3) To further implement the program, each trade shall conduct a short gang meeting, not less than once a week, to review project safety requirements mandatory for all persons during the coming week. The gang foreman shall report the agenda and specific items covered to the project superintendent, who shall incorporate these items in his/her daily log or report.

(4) The prime contractor and all subcontractors shall immediately report all accidents, injuries, or health hazards to the owner and architect, or their designated representatives, in writing. This shall not obviate any mandatory reporting under the provisions of the Occupational Safety and Health Act of 1970.

(5) This program shall become a part of the contract documents and the contract between the owner and prime contractor, prime contractor and all subcontractors, as though fully written therein.

Section 7

Discovery of Archaeological and Other Historical Items

A. Construction Procedures

(1) In the event of an archaeological or more recent historical find (e.g., artifacts, housing sites) during any phase of construction, the following procedure should be followed:

(2) Construction shall be halted, with as little disruption to the archaeological site possible.

(3) The Contractor shall notify the Owner who shall contact the State Historical Preservation Officer.

(4) The State Historical Preservation Officer may decide to have an archaeologist inspect the site and make recommendations about the steps needed to protect the site, before construction is resumed.

(5) The entire event should be handled as expediently as possible in order to hold the loss in construction time to a minimum while still protecting archaeological finds.

B. National Register Status

In the event archaeological/historical data are evaluated to meet National Register criteria, the Advisory Council on Historic Preservation may be notified and asked to comment by the Water Quality Control Division.

Forms by Section

SRF forms can be found on this webpage: https://www.colorado.gov/pacific/cdphe/water-quality-srf-forms

Section 1 - Davis Bacon Prevailing Wages

- Davis Bacon Certification Form (SRF form)
- WH – 347 - Contractors Payroll Form
- Standard Form 1444 - Request for Authorization of Additional Classification and Rate
- Standard Form 1445 – Labor Standards Interview Form

Section 2 - American Iron and Steel

- American Iron and Steel Certification Form (SRF Form)
- American Iron and Steel Product Spreadsheet (SRF Form)

Section 3 –National Term on Suspension and Debarment

- No applicable forms

Section 4 - Disadvantaged Business Enterprise (DBE)

- EPA Form 6100-2 provided by prime contractor completed by DBE subcontractor and submitted to EPA at R8grants@epa.gov
- EPA Form 6100-3 provided by prime contractor completed by DBE subcontractor and submitted to EPA at R8grants@epa.gov
- EPA Form 6100-4 provided by subrecipient completed by prime contractor as part of bid package
- Form B provided by subrecipient completed by prime contractor submitted to SRF program at Cdphe_grantsandloans@state.co.us

Section 5 – Equal Employment Opportunity and Affirmative Action Requirements

- No applicable forms

Section 6 - Williams Steiger Occupational Safety and Health Act of 1970

- No applicable forms

Section 7 – Discovery of Archaeological and Other Historical Items

- No applicable forms

Board of Trustees Meeting

Date: October 13, 2020
Submitted By: Kelly Houghteling, Interim Town Administrator
Subject: Space Needs Discussion

- **Staff presentation: Kelly Houghteling, Interim Town Administrator**

EXECUTIVE SUMMARY

The Town of Wellington currently occupies five separate buildings for Town Hall operations. Town staff has outgrown these facilities and needs to find a solution until a new Town Hall is built.

BACKGROUND / DISCUSSION

There are several options the town could consider including renting additional commercial office spaces, modular units, or expanding a current building we own.

The Town has considered purchasing a modular unit to place near the Corner of 4th Street and Harrison Avenue, however there is concern about the resale value on a depreciating capital item and the significant costs associated with offsite improvements.

Another option is to expand the house at 3749 Harrison Avenue. Attached you will find both one-story and two-story building options with floor plans, elevations, and model views.

The one-story option provides space for 19 employees. The two-story option provides space for 31 employees. The two-story option would allow us to move staff from our other four buildings into this space and allow room for additional growth.

The one-story option would house Town Administration, Town Clerk's Department, Human Resources Department, and the Finance Department. The two-story option would also include the Planning Department and Public Works Administration. The two-story allows us to move the Larimer County Sherriff's Office from the Annex to Town Hall. This results in an annually cost savings of around $20,000 in rent and utilities at the Annex. This frees up a building on Cleveland Avenue for potential commercial use.

An added benefit of the expansion project is to invest in our downtown and serve as a catalyst for future development. Once a permanent Town Hall is built, the Town could sell this building, rent, or retain for future needs. The two-story expansion takes pressure off building Town Hall immediately. With the other large capital expenses on the horizon, this would allows us to set aside funds for Town Hall.

STAFF RECOMMENDATION

Staff is seeking direction on how to proceed.

ATTACHMENTS

1. Harrison House Expansion 10-7-2020

PROPOSED SITE PLAN

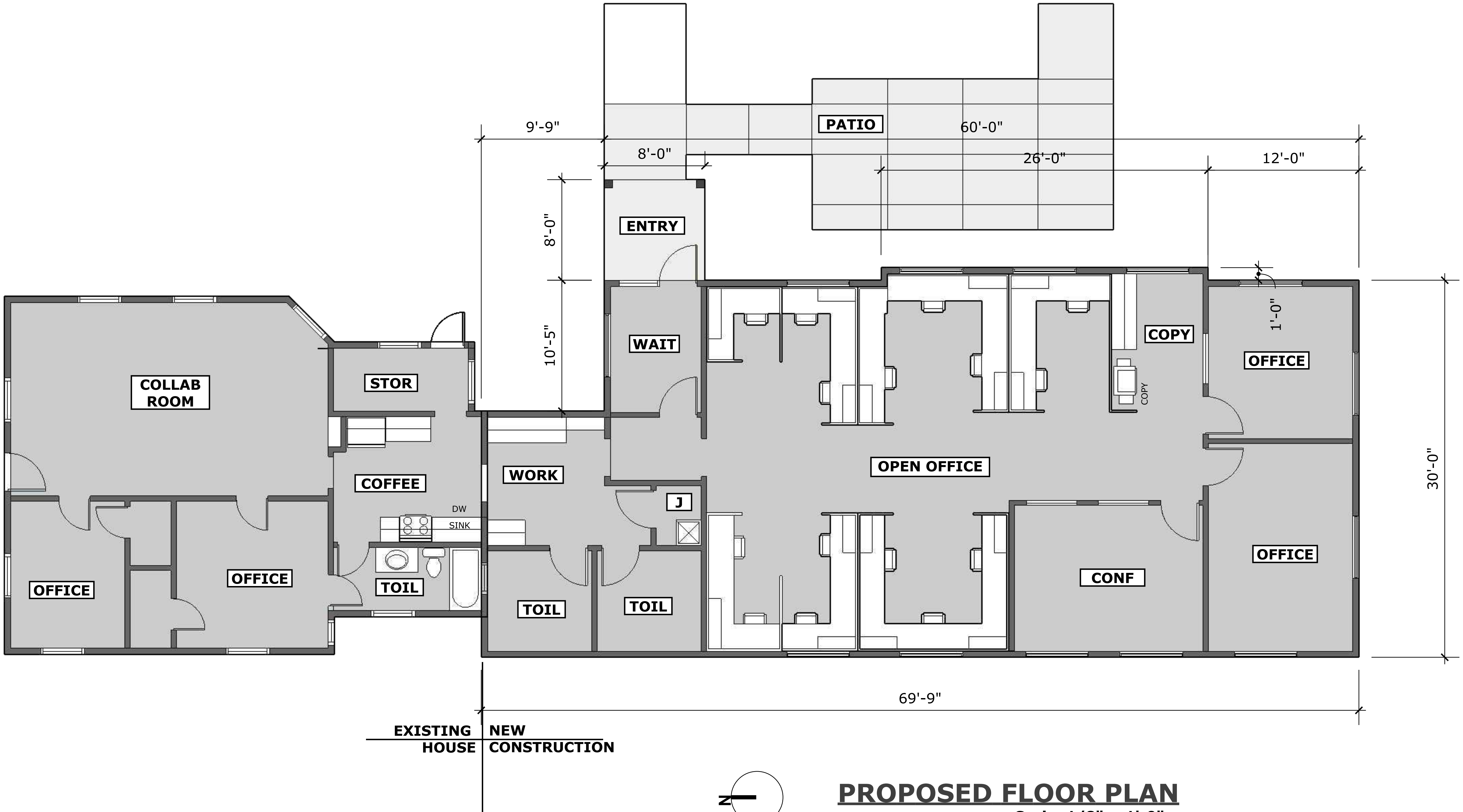
Scale: 3/32" = 1'-0"

infusion ARCHITECTS

HARRISON HOUSE EXPANSION

HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

TOWN OF WELLINGTON



PROPOSED FLOOR PLAN

Scale: 1/8" = 1'-0"

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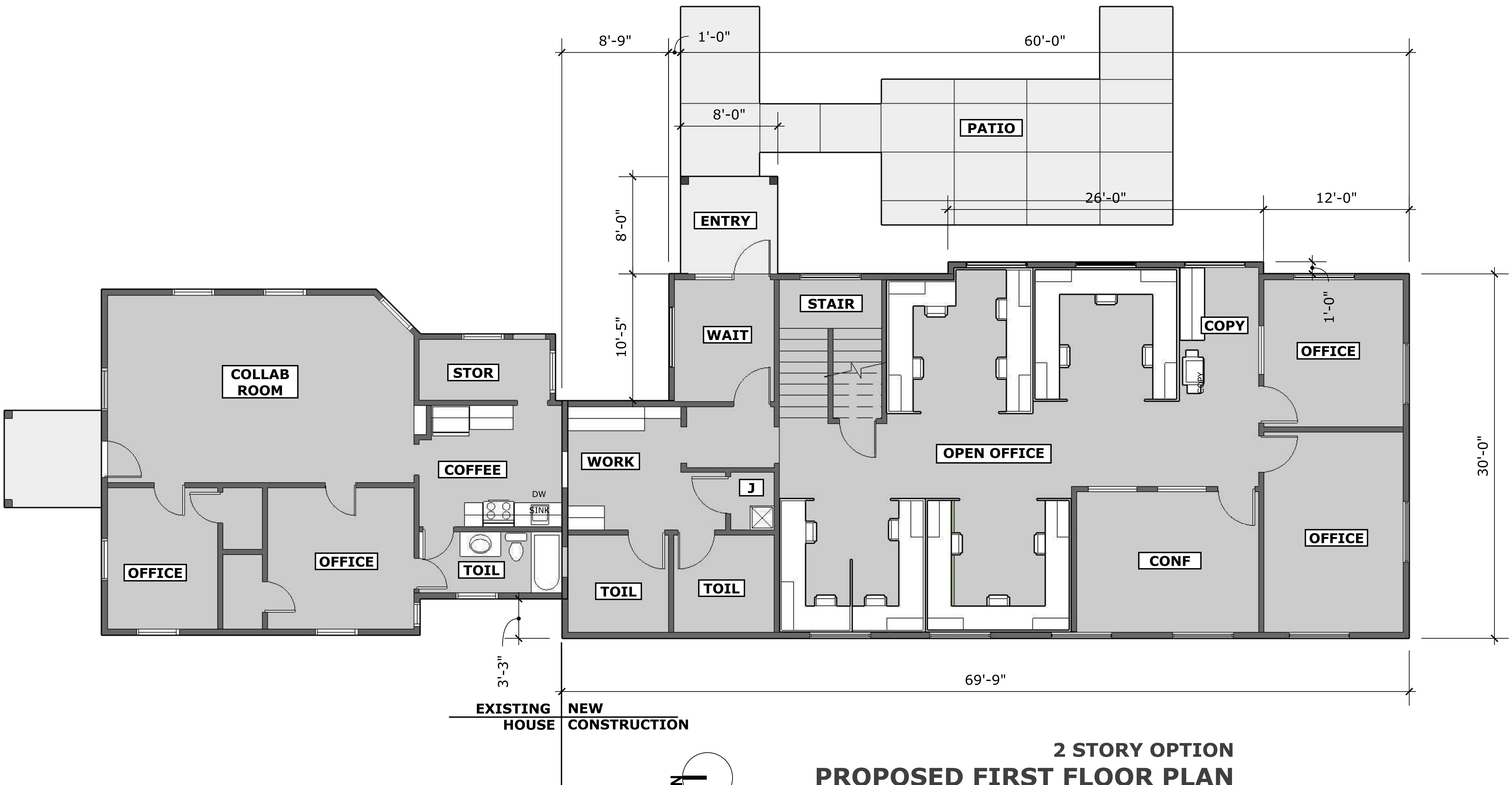
HARRISON HOUSE EXPANSION

HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

TOWN OF WELLINGTON



2 STORY OPTION

PROPOSED FIRST FLOOR PLAN

Scale: 1/8" = 1'-0"

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HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

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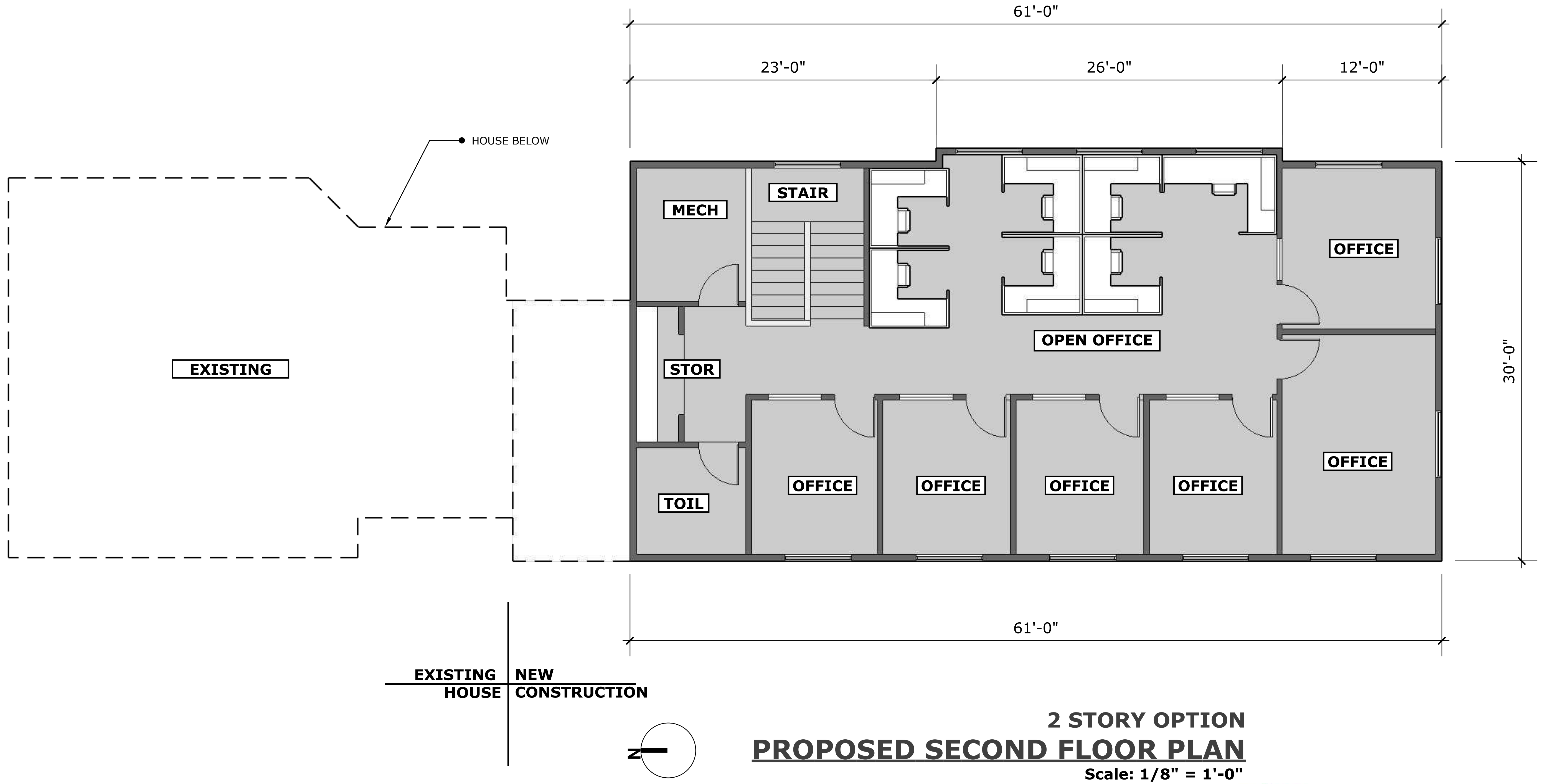

2 STORY OPTION

PROPOSED SECOND FLOOR PLAN

Scale: 1/8" = 1'-0"

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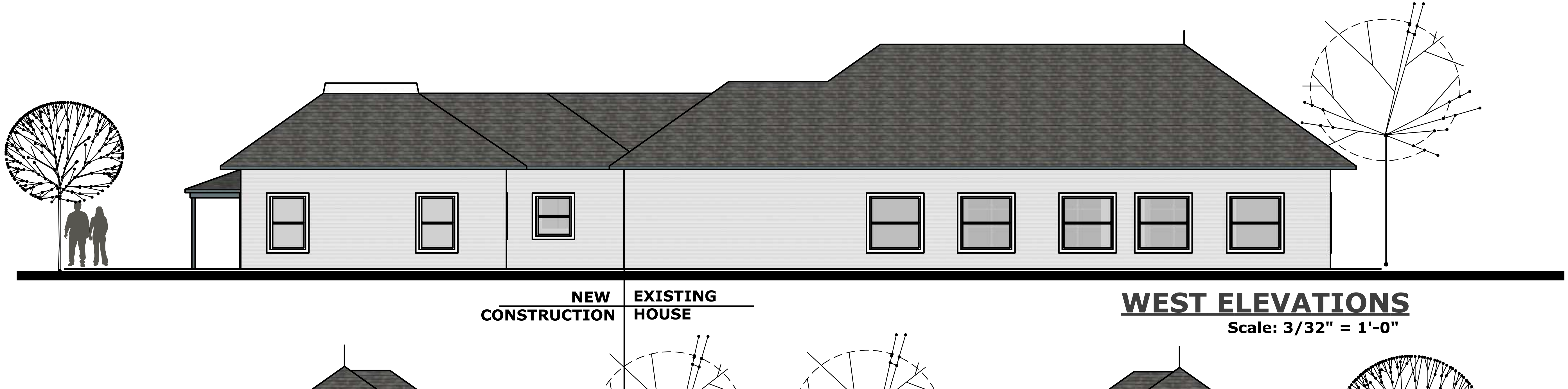
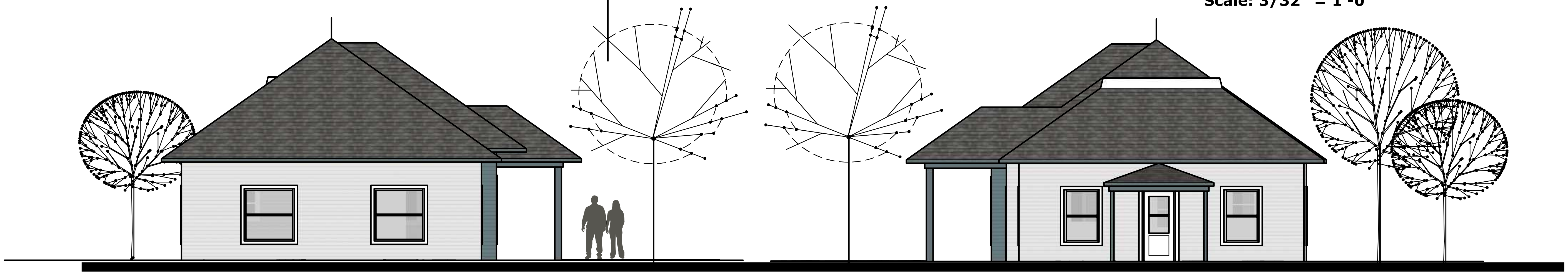
HARRISON HOUSE EXPANSION

HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

TOWN OF WELLINGTON

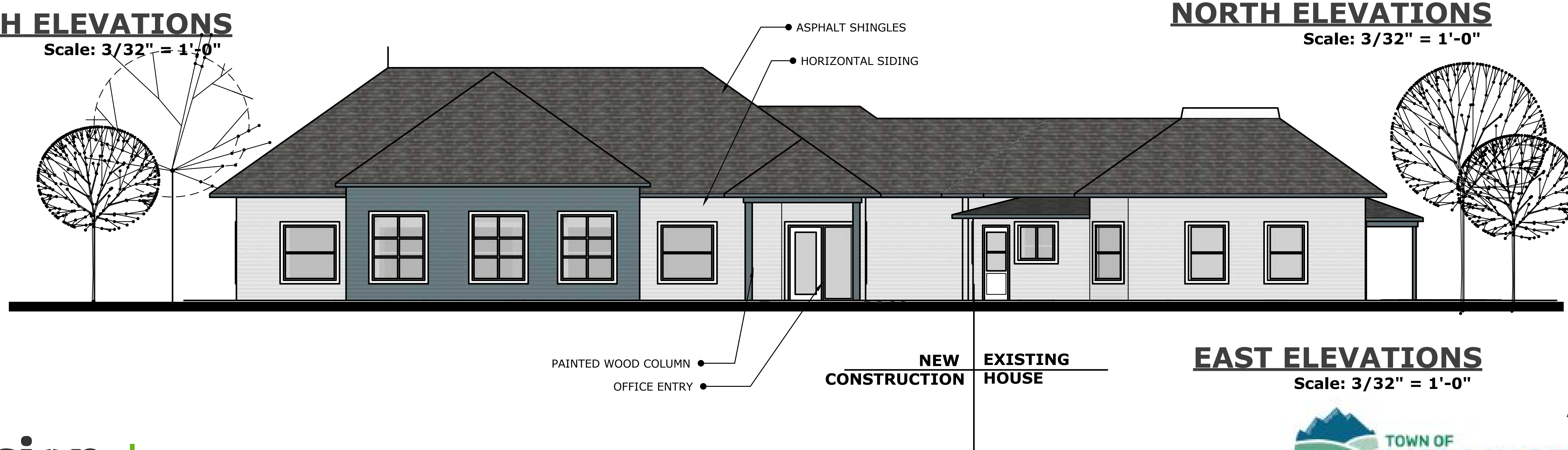


WEST ELEVATIONS
Scale: 3/32" = 1'-0"



SOUTH ELEVATIONS
Scale: 3/32" = 1'-0"

NORTH ELEVATIONS
Scale: 3/32" = 1'-0"



EAST ELEVATIONS
Scale: 3/32" = 1'-0"

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HARRISON HOUSE EXPANSION
HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

SOUTH EAST VIEW

ADDITION ENTRY

NORTH EAST VIEW

PERSPECTIVE VIEWS

A

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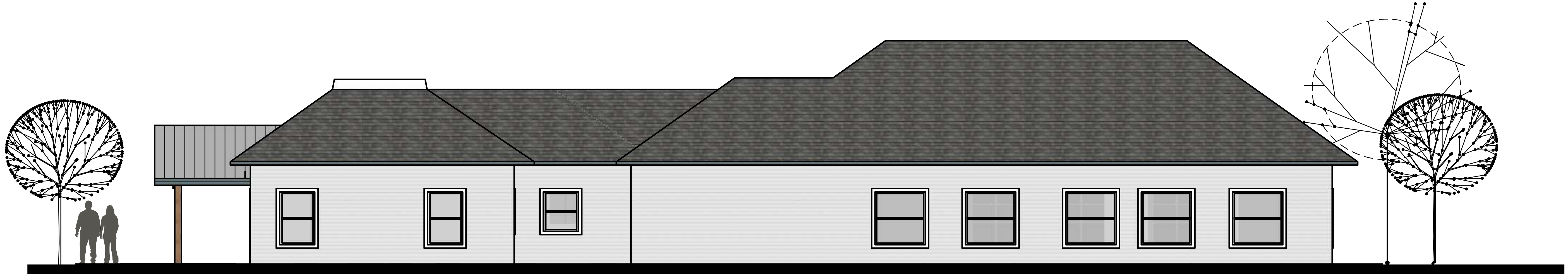
HARRISON HOUSE EXPANSION

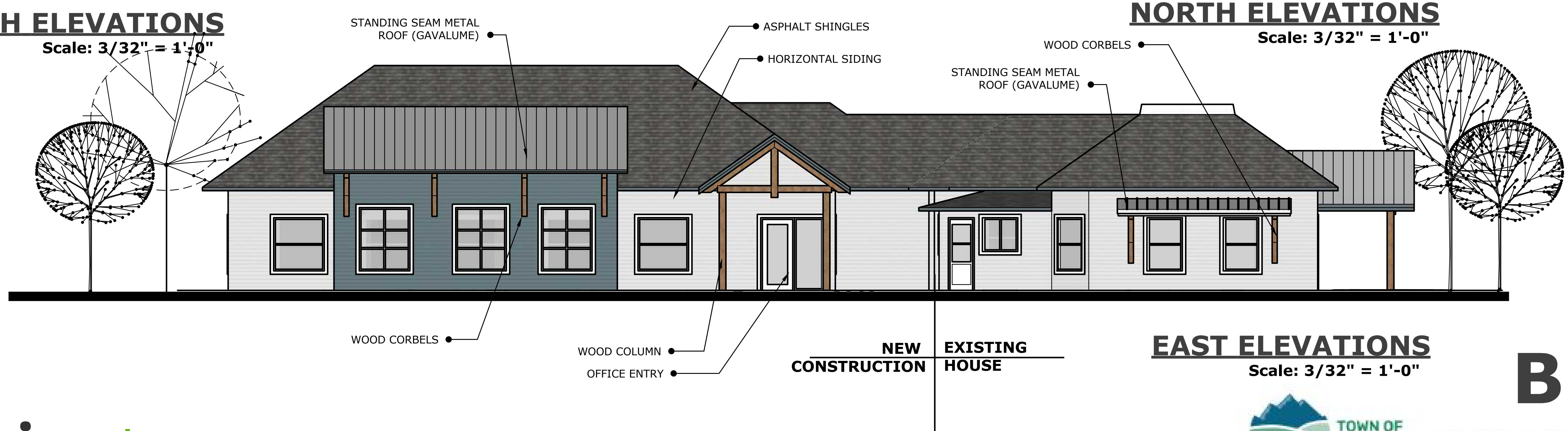
HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020



WEST ELEVATIONS
Scale: 3/32" = 1'-0"

SOUTH ELEVATIONS
Scale: 3/32" = 1'-0"

NORTH ELEVATIONS
Scale: 3/32" = 1'-0"



EAST ELEVATIONS
Scale: 3/32" = 1'-0"

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HARRISON HOUSE EXPANSION

HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

TOWN OF WELLINGTON

PERSPECTIVE VIEWS

B

TOWN OF WELLINGTON

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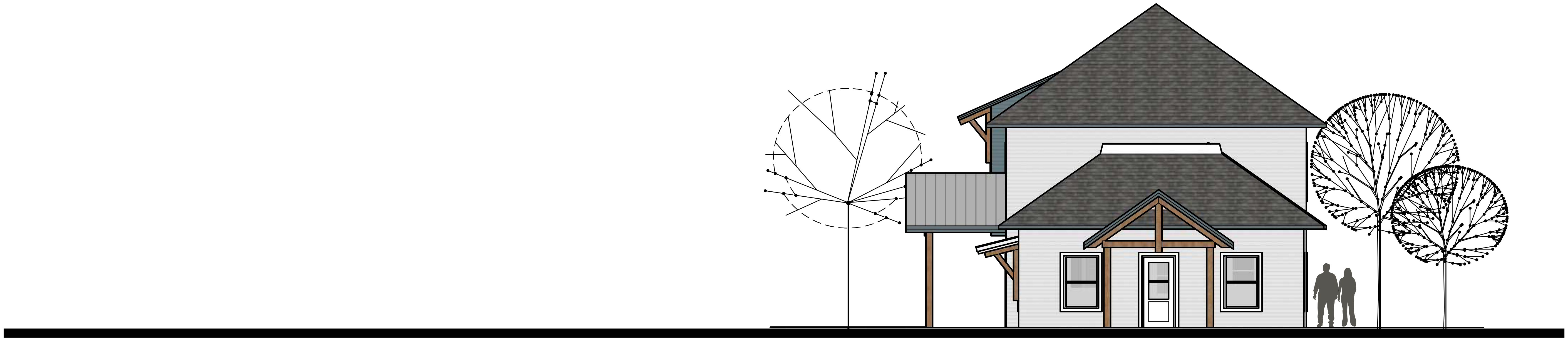
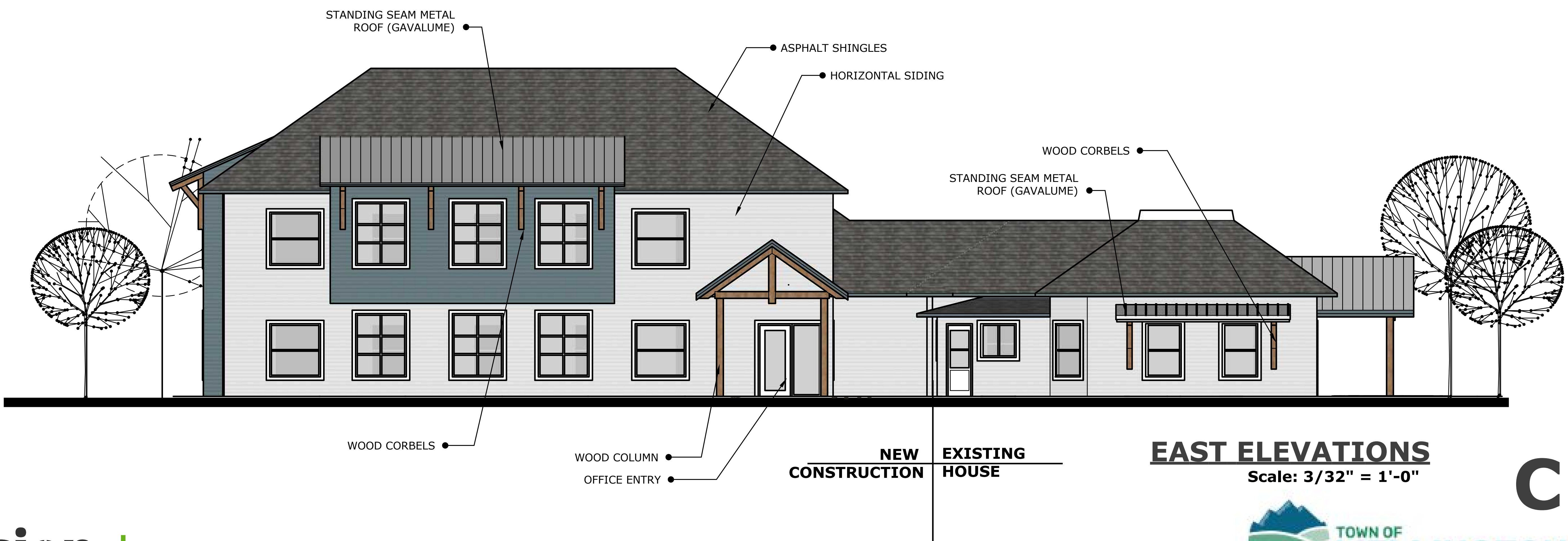
HARRISON HOUSE EXPANSION

HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020



NORTH ELEVATIONS

Scale: 3/32" = 1'-0"



EAST ELEVATIONS

Scale: 3/32" = 1'-0"

C

TOWN OF WELLINGTON

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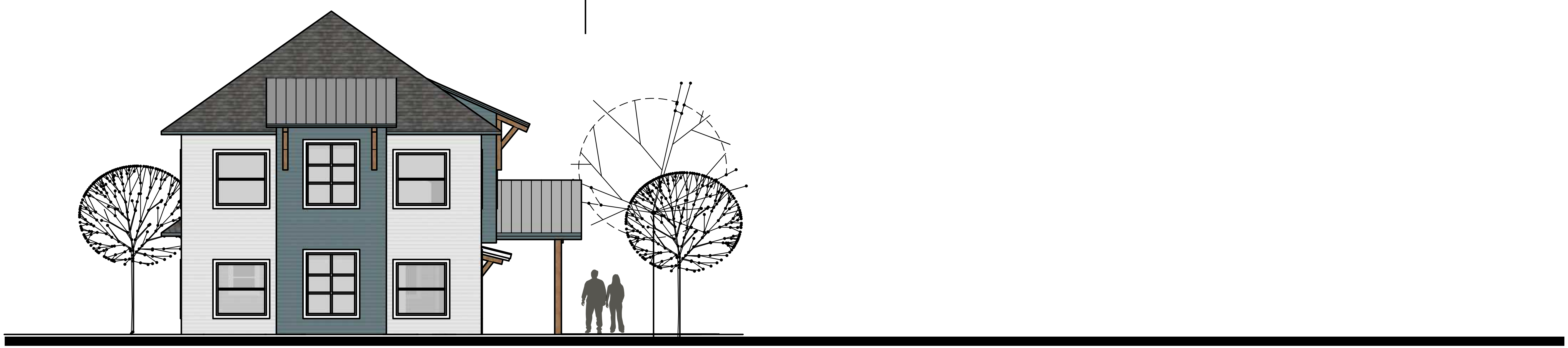
HARRISON HOUSE EXPANSION

HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

WEST ELEVATIONS
Scale: 3/32" = 1'-0"



SOUTH ELEVATIONS
Scale: 3/32" = 1'-0"

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ARCHITECTS

HARRISON HOUSE EXPANSION
HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

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PERSPECTIVE VIEWS

C

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HARRISON HOUSE EXPANSION

HARRISON AVENUE, WELLINGTON, COLORADO | October 7, 2020

Board of Trustees Meeting

Date: October 13, 2020

Submitted By:

Subject: Resolution 37- 2020 : A Resolution Granting the Town Administrator the Authority to Purchase Water Shares

- **Staff presentation: Kelly Houghteling, Interim Town Administrator**

EXECUTIVE SUMMARY

Water shares are difficult to acquire and require a rather quick ability to negotiate, therefore staff is requesting a modification to the Purchasing Policy. This would allow the Town Administrator and Town Treasurer the ability to purchase water shares, not to exceed the established cash-in-lieu amount per acre foot set forth in Resolution 28-2020.

BACKGROUND / DISCUSSION

The fundamental objective of the Town's Purchasing Policy is to provide operating departments within the Town with the goods and services they need in the right quantity and quality, in a timely fashion, as efficiently as possible, and at the lowest overall cost. The current purchasing policy, adopted August 28, 2018, limits the Town Administrator's authority to purchase budgeted items below $30,000. Anything above that threshold requires approval from the Board of Trustees.

The benefit of modifying the purchasing policy is to allow staff to be more responsive and aid in a faster turnaround time to negotiate water shares. Currently, staff has to wait for the next regular board meeting and that may cause the Town to lose out on the ability to purchase water shares.

STAFF RECOMMENDATION

Staff recommends approval of the resolution.

ATTACHMENTS

1. Resolution 37-2020_ Purchasing Policy Modification

TOWN OF WELLINGTON

RESOLUTION NO. 37-2020

A RESOLUTION MODIFYING THE PURCHASING POLICY TO ALLOW THE TOWN ADMINISTRATOR THE AUTHORITY TO PURCHASE WATER SHARES

WHEREAS, the Town of Wellington, Colorado (the "Town") provides that the Board of Trustees (the "Board") of the Town shall adopt a Purchasing Policy intended to ensure adequate and uniform control of the Town; and

WHEREAS, the Town's purchasing and payment activities are in accordance with Government Financial Officers Association best practices and applicable State of Colorado Law; and

WHEREAS, the Board desires to act in the timely manner when water shares become available; and

WHEREAS, the Town Administrator shall notify the Board when shares become available and shall be given authority to negotiate and purchase water shares below the established cash-in-lieu amount per acre foot set forth in Resolution 28-2020; and

WHEREAS, the Town Administrator and Town Treasurer shall not exceed the budgeted line item for "Raw Water Purchase" in the annual budget unless authorized by the Board of Trustees.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of Trustees of the Town of Wellington, Colorado, that the Town Administrator shall be granted the authority to negotiate and purchase water shares.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON THIS 13th DAY OF OCTOBER, 2020.

TOWN OF WELLINGTON, COLORADO

By:________________________________
Troy Hamman, Mayor

ATTEST:

____
Krystal Eucker, Town Clerk

TOWN OF WELLINGTON

Board of Trustees Meeting

Date: October 13, 2020
Submitted By: Cody Bird, Planning Director
Subject: Annexation Agreement and Development Agreement for Poudre School District Subdivision

- **Staff presentation: Cody Bird, Planning Director**

EXECUTIVE SUMMARY

The Board of Trustees has been in consideration of a draft annexation agreement and a draft development agreement for development of land owned by Poudre School District (PSD). The draft agreements were tabled to the October 13, 2020 Board of Trustees meeting to allow additional coordination. Town staff and PSD staff have coordinated on considerations for raw water contribution requirements and off-site road costs. Proposed requirements are reflected in the current drafts of both agreements included in this report.

BACKGROUND / DISCUSSION

The Town and Poudre School District (PSD) have coordinated on annexation of approximately 132 acres of land at the northwest corner of County Road 9 and County Road 62E for the purpose of constructing a new middle/high school.

The Town Board of Trustees adopted Ordinance 4-2020 annexing the property into the Town, and Ordinance 7-2020 approving a subdivision plat dividing the property into lots and streets. Execution of an annexation agreement and development agreement are conditions of approval of the ordinances.

The draft annexation agreement and draft development agreement are attached. Revisions to the agreements relating to raw water contribution requirements and off-site road costs are included and summary of the changes provided below:

<u>Raw Water Contribution Requirements:</u>

- PSD is requesting a 3-inch water tap for indoor use. The associated water tap and meter fee for a 3-inch meter is included ($109,843).
- The raw water contribution requirement for the requested 3-inch tap for indoor use only is 5.96 acre feet.
    - PSD will transfer 2 shares of North Poudre Irrigation Company (NPIC) stock shares to satisfy 4.80 acre feet of the raw water contribution.
    - The remaining 1.16 acre feet (0.48 NPIC shares) will be satisfied by payment of cash-in-lieu in the amount of $96,000 (0.48 x $200,000 NPIC market value).
- Outdoor irrigation for the site, including the Learning Park (courtyard) will be irrigated using non-potable water.
    - PSD may request to use Town-treated water for irrigation of the Learning Park in the future, and may install system improvements with the initial construction that would allow a connection to be made in the future.

TOWN OF WELLINGTON

    - If PSD requests water tap connection for Town-treated water supply for irrigation of the Learning Park in the future, the associated tap fees and raw water contribution would be evaluated and assessed at that time.

Off-site Road Improvements

- PSD will construct and complete road improvements to County Road 9 and County Road 62E in accordance with plans approved by the Town.
- In addition to the road improvements to County Road 9 and County Road 62E, PSD will also contribute $200,000 in cash-in-lieu of improvements for future improvements to the intersections of State Highway 1 and County Road 9, and County Road 62E and State Highway 1.
    - The $200,000 contributed by PSD will be ear-marked by the Town for use on design and construction of improvements at the State Highway 1 intersections in the future.
    - PSD will not be responsible for design or construction of improvements at the State Highway 1 intersections.
    - Payment of the $200,000 will satisfy the off-site road contribution for Lot 1, Block 1, Poudre School District Subdivision (the middle school/high school currently under construction). Development of future lots within the subdivision that are not currently under construction will be subject to payment of off-site road contributions at the time of development.
- The cash-in-lieu contributions for road improvements is in addition to the road impact fees PSD will pay in accordance with the Town's adopted road impact fee ($389,844).

STAFF RECOMMENDATION

Move to approve the annexation agreement and development agreement for Poudre School District Subdivision in substantially the form presented and authorize the Mayor to execute the agreements.

ATTACHMENTS

1. Draft Annexation Agreement
2. Draft Development Agreement

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made and entered into this ___ day of _______________, 2020 between the TOWN OF WELLINGTON, COLORADO, a Colorado municipal corporation, hereinafter referred to as the "Town" and Poudre School District R-1, 2407 LaPorte Ave., Fort Collins, CO, 80521, a Colorado public school district and political subdivision of the State of Colorado referred to as the "Owner".

WITNESSETH:

WHEREAS, Owner is the owner of property more fully described on Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner has filed a petition to annex the Property to the Town; and

WHEREAS, the Town passed Ordinance No. 4-2020 annexing the Property with execution of the Annexation Agreement by the Owner and the Town of Wellington a precondition to the Ordinance becoming effective; and

WHEREAS, Colorado's Courts have recognized that the Municipal Annexation Act of 1965 contemplates annexation agreements as a routine step in the annexation process; and

WHEREAS, the parties are desirous of entering into an annexation agreement to set forth various obligations of the parties including obligations for development and use of the property in the future;

NOW, THEREFORE, the parties agree as follows:

1. Dedications. Owners acknowledge that the Development Agreement, as defined in Section 6 below, requires dedication of property necessary to install Public Improvements, as defined in the said Development Agreement and as shown on the annexation map and on any subsequent subdivision or other plat. Owner warrants title to such dedicated property against claims by any party claiming by, through, or under the Owner, subject only to exceptions of record.

2. Infrastructure. Owner agrees to install all infrastructure improvements that are included in the definition and listing of Public Improvements set forth in the Development Agreement and make all dedications as set forth in this agreement and the Development Agreement and as may be reasonably required by the Town for any subdivision of the Property and for extensions of any Public Improvement necessary to serve building improvements on the Property.

All such infrastructure improvements installed by Owner shall be installed in accordance with the direction of the Town Engineer and Public Works Department and the Town's Standard Design Criteria as adopted by the Town dated March 10, 2015 and which may from time to time be amended (the "Standards"); provided, however, that no amendment to the Standards shall be binding upon the Owner unless such amendment has been provided to the Owner prior to approval of final construction drawings. Owner agrees to pay all costs to underground all utility lines that have been installed in order to extend service to the Property at the time the Property, or any part of the Property, is subdivided or otherwise developed.

Owner acknowledges and agrees that any off-site costs set forth in the Development Agreement will be payable within sixty (60) days (unless otherwise provided in the Development Agreement) following mutual execution of this Annexation Agreement and the Development Agreement.

3. Landscaping. Owner shall install street trees and landscaping along the perimeter of the Property near the public sidewalk which complies with the landscaping plan to be submitted to the Town as part of the platting process. Owner shall maintain street trees and landscaping in good and live condition, including proper watering, fertilization, pest control, and pruning necessary for the health and structural integrity of the trees and vegetation, and shall replace any dead trees or vegetation no later than the following planting season.

4. Development Impact Fees and Review Expenses. Owner agrees to pay development impact fees imposed by the Town including water and sewer tap, road impact, administration, and storm drainage as set forth in the Development Agreement. Development Impact Fees will be payable within sixty (60) days of mutual execution of the Annexation Agreement and Development Agreement. Owner and the Town will enter into a separate agreement on the Town's form D-5 for payment of review expenses. Off-site road improvement costs may be paid by Owner as agreed to in the Development Agreement, or other agreement as may be entered into by Owner and the Town.

Notwithstanding the foregoing, Owner Poudre School District R-1 will not be assessed building inspection fees because the School District receives the building inspections and certificate of occupancy through the State of Colorado per CRS 22-32-124(1)(c).

5. Water Contributions.

A. Raw water: Owner agrees to meet the raw water dedication requirements as adopted by the Town or as may be agreed to in a Development Agreement.

B. In-Building Water Supply. If conveyance of water rights and/or payment in lieu thereof pursuant to paragraph A. above is satisfied and a water tap permit is issued prior to November 1, 2020, the Town shall provide potable water service as is required to supply the improvements to be constructed by the School District on the Property. The amount of water required shall be determined at the time of final plat approval or at such other time as may be agreed upon in writing by the parties hereto. The water resources to be contributed may or may not already be adjudicated for municipal use at the time of contribution, provided that there are no known impediments to the legal or physical availability of such water resources for use in and delivery to and from the Town's water system.

C. Irrigation by Tributary Water. Notwithstanding subsection B above, the Owner shall retain all tributary water rights including all wells and tributary groundwater rights appurtenant to said wells located on the Property(including as needed all areas of the Property dedicated to the Town), and any ditch company shares that may be associated with such land, and the Town will cooperate in allowing the irrigation of the turf grass and landscaped areas of the Property with non-potable tributary water supplies, notwithstanding C.R.S. § 37-90-137(8) or any other law. Owner will convey to the Town all nontributary groundwater rights, including all nontributary groundwater rights in the Muddy Sandstone, Entrada Sandstone and Dakota Sandstone aquifers underlying and appurtenant to the Property.

6. Development agreement. The Town and Owner shall enter into a Development Agreement, which shall contain the agreed upon public improvements to be constructed by Owner and shall address the dedication and improvement of roads including sidewalks, signage and traffic control, the installation and maintenance of water and sewer services, including lift stations and related facilities, the installation and maintenance of storm drainage facilities and, if applicable, provisions for the construction and maintenance of bridges and similar structures and provisions for the payment of off-site improvement expenses.

7. Road construction and dedication. All roads and road improvements upon or related to the Property shall be funded and constructed as agreed to in the Development Agreement.

The Town has requested, and the Owner has agreed to dedicate road right-of-way at the northwest corner of the intersection of County Road 9 and County Road 62E for future intersection improvements, such additional right-of-way to be dedicated on the final plat.

Owner agrees to pay a portion of costs for improvement of the intersections of State Highway 1 and County Road 9, State Highway 1 and County Road 62E, and County Road 9 and County Road 62E (collectively, the "Intersection Improvements"). Funding amounts for Owner costs shall be determined in the Development Agreement, or other agreement as may be entered into between the Owner and Town. For purposes of this Annexation Agreement, Owner costs for Intersection Improvements will be determined for each Lot within the development at the time that Lot is developed, subdivided or otherwise improved.

8. Water/Sewer improvements. Owner shall install water and sewer improvements and related facilities as may be necessary to serve the Property which improvements shall

be further defined by the development agreement. The Town shall not be obligated to provide water or sewer service to any portion of the Property and in no event will the Town approve water service until it is confirmed that the Town has adequate water and sewer capacity to serve the Property. All water and sewer mains and appurtenant facilities shall be constructed in accordance with applicable Town ordinances, rules, regulations, Standards and engineering specifications as may be in effect at the time of development, and upon completion and acceptance by the Town, any such improvements shall be conveyed to the Town, and the Town shall thereupon assume the responsibility for the maintenance, repair, and replacement of said mains and facilities. Owner will pay all costs associated with obtaining water and sewer service for the Property and will grant, without cost, all necessary easements for construction and maintenance of any sewer or water improvements necessary serve the Property.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED THAT THE NORTHERN COLORADO WATER ASSOCIATION WILL NOT PROVIDE DOMESTIC WATER SERVICE TO THE PROPERTY AND THAT THE NORTHERN COLORADO WATER ASSOCIATION HAS CONSENTED TO THE TOWN PROVIDING WATER SERVICE TO THE PROPERTY.

9. Non-municipal Dedications. Owner agrees to provide appropriate and standard easements or rights-of-way for non-municipal utilities as recommended by the Town Engineer including easements for gas, electric, cable TV and irrigation water service.

10. Storm Drainage Improvements. Owner shall construct and maintain such storm drainage improvements identified in the MOU and as may be required during subdivision/development of the Property in accordance with applicable Town regulations and Standards. Unless it otherwise consents, the Town shall not be obligated to provide storm drainage improvements for any portion of the Property.

11. Agricultural use. As of the date of this Agreement, portions of the Property are being used for agricultural purposes. The Property may continue agricultural uses legally existing at the time of annexation including grazing livestock and maintenance of fences (including barbed wire fences) until the earlier of commencement of construction of any structural improvement on the property or approval of a development agreement or subdivision/final plat.. Thereafter, the Owner shall discontinue agricultural uses of the Property unless otherwise agreed to in writing by the Town. The Town and other governmental authorities have adopted certain weed control, dust control and other nuisance standards. If the Property is not farmed or Owner does not otherwise ensure that sources of weed, dust and nuisance violations are addressed, the Town shall have the right to address the sources of such violations and Owner shall reimburse any costs the Town reasonably incurs in addressing such violations.

12. Initiative/Referendum. If the annexation of the Property, or any portion thereof, is challenged by initiative or referendum, all provisions of this Agreement, together with

the duties and obligations of each party (including payment of all taxes imposed by the Town and enforcement of any Town ordinances on the Property), shall be suspended pending the outcome of the initiative/referendum election. If the initiative/referendum challenge results in disconnection of the Property from the Town, then this Annexation Agreement and all provisions contained herein shall be null and void and have no further effect. If the initiative/referendum challenge fails, then the Owner and the Town shall continue to be bound by all the terms and conditions of this Annexation Agreement.

If any citizen-initiated or referred ordinance becomes effective in the Town within eleven (11) months after the effective date of the annexation ordinance, which substantially alters or limits Owner's right to use its portion of the Property as contemplated by this Agreement, then the Town, upon the written request of Owner, will proceed to take all necessary action to disconnect the Owner's Property from the Town.

The provisions of this section 12 are subject to the laws and rights, authority, and prerogatives of Poudre School District R-1 pertaining to the location of public schools.

13. Disconnection. Owner may not petition the Town to disconnect any portion of the Property if the effect of that disconnection would be that any other property in the Town would no longer have the contiguity to the Town. Absent approval by Town, Owner waives any right to disconnect the Property for failure on the part of the Town to provide services as would otherwise be allowed by C.R.S. §31-12-119. If Owner properly disconnects any portion of the Property as provided for herein, this Agreement shall continue to bind the Owner and Property to the extent that the Town has incurred obligations in reliance on this Agreement and the annexation petition.

14. Court Action. If the annexation of all or any portion of the Property is voided by action of any court (excluding any action arising as a result of an initiative or referendum) the Town and Owner shall cooperate to cure any legal defect which resulted in disconnection and upon cure this Agreement shall be deemed an agreement to annex such property to the Town as provided for by C.R.S. §31-12-120. Owner shall reapply for annexation with the property becomes eligible for annexation as determined by the Town.

15. Town's Ordinances. Development of the Property shall be governed by the Town's ordinances, resolutions, standards, fees and policies currently in effect and as may be adopted or amended in the future. Except as set forth in this Agreement, land use issues remain subject to the police power and legislative authority of the Town; provided, however, that development of the Property by Poudre School District R-1 shall be subject to CRS §22-32-124.

16. Enforcement. This Agreement shall be specifically enforceable by a court of competent jurisdiction. In the event of a material breach of any material provision of this Agreement, the nonbreaching party may ask a court of competent jurisdiction to enter a writ of mandamus, temporary or permanent restraining orders, temporary or permanent injunctions, or orders of specific performance to compel the breaching party to perform

its duties under this Agreement and to grant such other relief as may be afforded by law, it being the intent of this provision to supplement the law of remedies.

17. Further agreements. The parties agree to sign any further documents reasonably required by Owner or the Town to carry out the terms of this Agreement.

18. Recordation. This Agreement and any amendments to this Agreement may be recorded with the Larimer County Clerk and Recorder and shall be binding upon and inure to the benefit of the heirs, transferees, successors, and assigns of the Owner. Upon conveyance of any interest in the Property, the previous Owners shall be released of any future obligation hereunder as to the portion of the Property conveyed. This Agreement shall constitute a covenant running with the Property.

19. Entire agreement. Subject to the Town code and other properly adopted authority, this Agreement represents the entire agreement between the parties. Any amendments to this Agreement to be affective shall be in writing.

20. Vesting. The Town's ordinance 16-1999 defines site specific development plans and provides that vested property rights are only created if properly requested at the time of approval of a development agreement or final subdivision plat. This Annexation agreement does not give rise to any claim of vested rights related to the Property.

21. Counterparts. This Agreement may be executed by any number of counterparts and by any number of counterpart signature pages, each of which shall be an original with the same effect as if each of the signatures were affixed to the same instrument.

22. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices by hand delivery shall be effective upon receipt. All facsimile transmissions shall be effective upon transmission receipt. All notices by mail shall be considered effective 72 hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town:	Town Administrator Town of Wellington Post Office Box 127 Wellington, Colorado 80549
With a copy to	Wellington Town Attorney Attn. Brad March March and Olive, LLC 1312 S. College Avenue Fort Collins, CO 8024

Notice to Owner:	Poudre School District R-1 Planning / Operations 2407 LaPorte Ave Fort Collins, CO 80521
With a copy to:	Semple, Farrington, Everall & Case., P.C. Attn. Darryl L. Farrington 1120 Lincoln Street, Suite 1308 Denver, CO 80203

23. Election. Owner agrees that they are voluntarily entering into this Agreement. Owner represents and submits that, to the extent an election would be required pursuant to C.R.S. § 31-12-112, as amended, to impose terms and conditions upon the Annexed Property, Owner owns 100 percent of the Annexed Property, excluding public streets and alleys, and would vote to approve all terms and conditions as set forth herein. Thus, any election would necessarily result in a majority of the electors' approval to the terms and conditions hereof.

24. No Third-Party Rights. This Agreement is made solely for the benefit of the parties hereto, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.

25. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Larimer County, Colorado.

26. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

27. Legal Authority of School District. Notwithstanding anything herein to the contrary, this Agreement shall not limit or alter the Poudre School District R-1's legal rights and authority with regard to the location, construction, reconstruction, or expansion of any school or school-related building or structure as provided in CRS § 22-32-124, or any other law.

IN WITNESS WHEREOF, the parties hereto have executed this Annexation Agreement the day and year first written above.

THIS AGREEMENT CREATES OBLIGATIONS FOR VARIOUS PROPERTY OWNERS AND MAY CREATE OBLIGATIONS TO MAINTAIN CERTAIN ROADS ON THE PROPERTY, LIENS OR OTHER RIGHTS AGAINST OWNER AND THE PROPERTY. IT HAS BEEN RECOMMENDED TO OWNER THAT THIS AGREEMENT BE REVIEWED WITH LEGAL COUNSEL.

TOWN OF WELLINGTON, COLORADO

By: ____

Troy Hamman, Mayor

ATTEST:

____

Kelly Houghteling, Interim Town Administrator/Clerk

APPROVED AS TO FORM

March & Olive, LLC
Town Attorney

By: __________________________

J. Brad March

PSD Signatures Page

POUDRE SCHOOL DISTRICT R-1

By: ___________________________________

Matt Bryant

Executive Director of Operations

Authorized Signatory (Board Resolution dated 11 June 2019 and recorded with the Larimer County Clerk and Recorder at Reception Number 20190032049)__________)

XXXXXXXX

EXHIBIT “A”

Description:

[Insert Legal]

MEMORANDUM OF AGREEMENT
FOR PUBLIC IMPROVEMENTS
Poudre School District Subdivision

THIS AGREEMENT, made and entered into this _____ day of __________, 2020 by and between the TOWN OF WELLINGTON, COLORADO, a municipal Corporation, hereinafter referred to as the "Town" and Poudre School District R-1 a public school district and political subdivision of the state of Colorado, hereinafter referred to as "Developer."

WITNESSETH:

WHEREAS, Developer is the owner of certain Property situated in the Town of Wellington, County of Larimer, State of Colorado, legally described on Exhibit "A" attached hereto and incorporated herein (the "Development");

WHEREAS, the parties hereto have agreed that the Development will require increased municipal services from the Town in order to serve such area and will further require the installation of certain public improvements that will benefit the Development and the Town as a whole; and

WHEREAS, the Planning Commission of the Town of Wellington recommended approval of the plat of Poudre School District Subdivision on February 3, 2020, and the Town Board of Trustees granted approval on February 25, 2020 by Ordinance No. 7-2020, which requires the Developer to enter into this agreement to provide for the installation of required public infrastructure improvements hereinafter described, all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and conditions hereinafter contained, it is agreed as follows:

1. Improvements and Public Improvements; Acceptance and Ownership by Town.

The Public Improvements and the Development Improvements (as both are defined in section 4 below) (hereinafter sometimes called the "Improvements"), shall be constructed and installed in accordance with construction plans which will be approved in accordance with Section 4(b) ("Approved Plans"). The Public Improvements include the following:

a) Street grading, paving and stabilizing (the "Street Improvements");

b) Storm sewers, including all necessary catch basins, inlets, pumping stations, detention areas and other appurtenances (the "Storm Sewer Improvements");

c) Water main laterals or extensions, including all building services, hydrants, valves and other appurtenances (the "Water Main Improvements");

d) Sanitary sewer laterals or extensions, including all necessary building services and other appurtenances (the "Sanitary Sewer Improvements");

e) Permanent street surfacing, including pavement, concrete, curb and gutter for public streets within a dedicated public right-of-way, but not including private driveways, parking lots, service courtyards or other private paving improvements (the "Permanent Street Improvements");

f) Standard street name signs at all newly opened intersections and such other reasonable and typical traffic control signs as required by the Town Engineer (hereinafter called "Traffic Signing Improvements");

g) Sidewalks; and

h) All landscaping, irrigation improvements including well, pumping system, and private and public irrigation lines.

The Town agrees to accept for maintenance and repair all the Public Improvements contemplated by the Approved Plans upon the issuance of a final acceptance letter subject to the requirements set forth in Section 5.h) below.

2. General Conditions.

a) The Parties acknowledge that the Development is subject to the building permitting and certification process of the Colorado Division of Public Safety (the "Division"), unless the Division has contracted with the Town for implementation and enforcement of the various applicable codes adopted by the Division. It is further agreed that, while the certificate of occupancy shall be based upon the Division's standards and requirements, the Developer will not commence educational services to students within the Development until all utilities and related improvements required for service to the Development have been inspected and approved for Construction Acceptance.

b) Developer agrees to install in a specified sequence and pay for all improvements and other municipal facilities determined by the Town Engineer to be necessary as shown on the Approved Plans, and as further provided under the Special Conditions section. The installation includes, but is not limited to, streets, sidewalks, curbs and gutters, landscaping, water lines, sanitary sewer, storm drainage and such other improvements as stated in this Agreement and shown on the Approved Plans on file with the Town.

c) Street Improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all service lines leading in and from the main to the property line in the Development.

d) The installation of all utilities shown on the utility drawings shall be inspected by the Town Engineer and shall be subject to his approval. Developer shall correct any deficiencies in such installation in accordance with Section 5.h) below in order to meet the requirements of the Approved Plans.

e) Developer shall provide the Town Engineer with copies of all drawings in digital form and certified as-built utility drawings upon completion of the construction.

f) Developer shall install all telephone lines, electric lines, cable television lines and other like utilities underground in conformance with Sec. 16-3-260 *et seq*. of the Wellington Municipal Code. Such underground installation includes undergrounding of existing overhead lines but only to the extent that any existing overhead lines are associated with the construction of public improvements as follows: (i) Developer will convert the existing overhead electrical line to an underground electric line along the eastern boundary of the Development during construction of the associated public improvements along County Road 9 ; and, (ii) Developer will convert the existing overhead electrical line to an underground electric line along the southern boundary of the Development during construction of the associated public improvements along County Road 62E. Developer is not required to convert the existing overhead electrical line to an underground electric line along the north and west boundary of the Development unless and until such time as the adjacent Lots are developed.

g) Developer shall install a street lighting system and associated underground street lighting supply circuits in conformance with Sec. 16-3-260 *et seq*. of the Wellington Municipal Code, or as otherwise agreed to by the Town.

h) Developer agrees to control all weeds growing within the Development.

g) Developer agrees to provide, install, and maintain at their expense adequate barricades, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as required by the applicable jurisdiction.

h) Developer shall, at all times, keep the public right-of-way free from accumulation of waste material or rubbish caused by construction activities within the Development. It shall remove such rubbish no less than weekly and, at the completion of any phase of work, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. Developer agrees to maintain the finished street surfaces free from any excessive accumulation of dirt and/or construction materials. In the event that Developer fails to adequately clean the street(s) within two (2) days after written notice, the Town may have the street(s) cleaned and charge Developer for said cost or cleaning. If the Town is notified by the health or other authoritative agency that steps must be taken to address concerns, then the Town may without notice take such steps as necessary and may hold Developer liable for all reasonable costs of correction.

i) Developer shall obtain a State of Colorado Stormwater Discharge Permit for Construction Activity and install and maintain erosion control in accordance with an approved Stormwater Management Plan (SWMP).

3. Special Conditions. The Town and Developer agree to the following special conditions applicable to the Development:

a) Developer shall construct on and off-site public improvements which directly affect the Development at Developer's sole expense, except where over-sizing or enhancement of public improvements is required or desired by the Town to serve future development and the Town and Developer have agreed to the amount of the Town's financial participation.

b) All infrastructure installed by Developer or required in conjunction with the Development must be constructed pursuant to the Approved Plans in accordance with Section 4.b).

c) "Red line" engineering comments on the site plan shall be addressed in the final construction plans. The feasibility of proposed infrastructure, drainage, and public improvement standards shall be as agreed to by the Developer, Town Administrator, and Town Engineer, and in reference to the Wellington Standard Design Criteria and Construction Requirements as adopted by the Town on March 10, 2015 and which may from time to time be amended.

d) Developer has requested a three-inch (3-inch) domestic water tap and the Town is willing to provide a three-inch (3-inch) water tap to serve the development. Developer shall pay a water tap fee of $109,843 for the requested 3-inch tap and meter within sixty (60) days following mutual execution of this Development Agreement.

In addition to the water tap fee referenced above, the raw water contribution requirement for the requested 3-inch tap is 5.96 acre feet, which can be satisfied by the transfer of two and forty eight-one hundredths (2.48) North Poudre Irrigation Company ("NPIC") stock shares, which have an estimated market value of $200,000.00 per share. The Town and Developer agree that Developer will meet this requirement by transferring to the Town two (2) NPIC stock shares and, in addition to such share transfer, by paying to the Town a fee in the amount of $96,000.00 in lieu of the additional 0.48 share transfer. Such transfer of stock shares and payment shall be made within sixty (60) days following mutual execution of this Development Agreement.

e) Sanitary Sewer Tap Fee. Developer has requested one (1) six-inch (6-inch) and six (6) four-inch (4-inch) sewer service taps. Developer shall pay a sewer tap fee of $62,490 for the requested sewer taps within sixty (60) days following mutual execution of this Development Agreement.

f) Storm Drainage Impact Fee. The storm drainage impact fee is determined based upon impervious surface areas.

	Sq Ft	Factor	Cost ($.33 / sq ft x Factor)
Building Footprint Area	164,530	0.9	$48,865.41
Concrete Paving	427,854	0.9	$127,072.64
Asphalt Paving	554,274	1.0	$182,910.42
Compacted Gravel	175,869	0.4	$23,214.71
Landscaping Areas	2,084,604	0.0	$0.00
Native Landscaping	2,016,722	0.0	$0.00
Total Site	5,423,853		$382,063.18

The Storm Drainage Impact Fee is calculated at $0.33 per sq. ft. of impervious surface area. Building and concrete areas are assessed at a factor of 0.9, asphalt at 1.0, compacted gravel at 0.4 and landscaping/native ground at 0.0.

g) Road Impact Fee. Developer has provided a Transportation Impact Study (TIS) identifying that the first phase of development is anticipated to generate 3,094 Average Daily Vehicle Trips (ADT). The Town's adopted road impact fee is $126 per ADT. Developer shall pay a road impact fee of $389,844 within sixty (60) days following mutual execution of this Development Agreement.

h) Off-site Road Improvements. The Developer has budgeted a total of $3,745,000 for all Public Improvements involving County Road 62E and County Road 9 (the "Road Budget Improvements"). The Road Budget Improvements budgeted by the Developer did not contemplate funds for off-site improvements to the intersection of State Highway 1 and County Road 9 (LCR 9) and County Road 62E (LCR 62E) and State Highway 1 (the "Intersection Improvements"). The parties agree that the Development contributes to the traffic impacts at the location of the Intersection Improvements, and therefore is a party to contribute funds for the Intersection Improvements. The Town, at its cost and expense, initiated a study to identify an appropriate design for the Intersection Improvements, cost estimate and equitable funding amounts for contributing properties and agencies; however, the results of the study are not available at the time of this agreement. The parties agree that timely execution of this agreement is essential for the Development, and further agree to expeditiously determine an acceptable funding contribution by the Developer to reasonably satisfy the Development's portion of the Intersection Improvements. Therefore, the parties agree as follows:

- Developer will perform the Road Budget Improvements as currently planned and budgeted per the plans submitted to the Town and approved as part of the overall site development plan.

- Developer will not be responsible for the design or construction of the Intersection Improvements.

- Developer will pay to the Town the sum of $200,000 (the "Intersection Contribution") which is in addition to the cost of the Road Budget Improvements and in addition to Developer's total budget for the Development.

- The Intersection Contribution will be used by the Town in the design and construction of the Intersection Improvements, at such time as the Town elects to proceed therewith in the Town's sole discretion.

- Based upon the Wellington High School Traffic Impact Study dated October, 2019, prepared and sealed by Delich Associates, Developer believes that, with the Road Budget Improvements completed, the off-site intersections at State Highway 1/LCR 9 and State Highway 1/LCR 62E will be able to accommodate the traffic impacts of the new school in accordance with applicable Town, Larimer County and CDOT standards.

In consideration of the Intersection Contribution and assuming completion of the Road Budget Improvements as currently planned and authorized, Developer will have no further obligation, financial or otherwise, for off-site road improvements related to or arising in connection with the Development.

i) Park and Open Space Improvements. Development of any portion of the Property, if not used for public school or school district purposes, shall provide park and open space dedications and improvements in accordance with applicable requirements, regulations and design criteria of the Town.

j) Future Development. The parties recognize that the Development will include a middle school / high school only. Any future development of additional sites within the Property (such as for an elementary school, middle school, and/or other facilities) will not commence until the parties hereto mutually execute a separate development agreement for such project(s).

4. Public Improvements and Development Improvements. The term "Public Improvements" as used in this Agreement refers to those utilities, transmission lines, pipes, roads, drainage ways and related facilities and structures which are intended to be conveyed or dedicated to and accepted by the Town, and to be owned and maintained, repaired, and replaced by the Town in the future. Without limiting the generality of the foregoing, Public Improvements shall include on-site and off-site water lines (but not service laterals) to subdivision boundaries, on-site and off-site roads (but not internal driveways and traffic areas) to subdivision boundaries, on-site and off-site sanitary sewer lines (but not service laterals) to subdivision boundaries, sidewalks in public easements, public parks, landscaping, and on-site and off-site drainage facilities. The term "Development Improvements" refers to service laterals, internal traffic ways, and other appurtenant facilities and structures covered by this Agreement which are not intended to be conveyed or dedicated to the Town, and as to which Developer will remain responsible for the future maintenance, repair, and replacement. When a provision is applicable to both Public Improvements and Development Improvements, they are both included in the term "Improvements." The term "Improvements" does not include any school building, athletic structure, or other facility that is part of the Development but is not listed as either a Public Improvement or a Development Improvement.

a) Developer. Developer will construct and install at the Developer's expense the Improvements according to this Agreement, and all drawings, plats and regulations referred to herein. When a permit is issued for construction of Improvements as to which the Town has permitting responsibilities, Developer shall provide to the Town a specific sequence of work and estimated timetable.

b) Construction Plans and Approval Thereof. Developer will engage at the Developer's expense a Colorado-registered civil engineer to prepare detailed plans and specifications for the complete installation of all Public Improvements in accordance with the Approved Plans (hereinafter "Construction Plans"). Such Construction Plans shall be designed in accordance with the Wellington Standard Design Criteria and Construction Requirements as adopted by the Town March 10, 2015 (hereinafter called the "Standards"), which may from time to time be amended. Such Construction Plans shall be based upon such engineering surveys, including such soil borings and material tests reasonably determined to be necessary by the Town Engineer and must be submitted to and be approved in writing by the Town Engineer prior to the commencement of the construction of any public improvements.

c) Services to be Performed by the Town Engineer and Payment Therefor.

1) The Town will perform the following activities with respect to Public Improvements: review and approve the work of the Developer's Engineer; the Town may, but shall not be required to, inspect and test construction methods and materials including but not limited to compaction tests,

aggregate gradation tests, finished pavement density and depth tests; and conduct final job inspections. No acceptance by the Town shall relieve Developer of its obligations hereunder.

2) Developer shall pay the Town for costs incurred by the Town in the performance of the above said services within sixty (60) days of the Town submitting an invoice for said services. Failure by Developer to pay within the specified time shall be cause for the Town to deny future building permits and/or order a cessation of all activities on the Development.

d) Services to be Performed by the Developer's Engineer. The Developer's Engineer shall be responsible for the preparation of the detailed construction plans, including the preparation of estimates, special contract provisions, preparation of proposal forms, and designation and description of all necessary temporary and permanent easements; for the staking out of the construction, the tie in of utility locations; testing and inspection of construction methods and materials; the preparation of as-built drawings; and other duties as may be required by the Town Engineer.

e) Construction of Public Improvements.

1) Approval of Contractors. Any contractor selected by Developer to construct and install any public improvement must be determined in writing by the Town Engineer to be acceptable. The Town reserves the right to require satisfactory proof of successful experience and adequate financial status by any such contractor.

2) Construction. Construction, installation, materials and equipment for Public Improvements shall be in accordance with Approved Plans. Developer will cause the contractors to furnish the Town Engineer with a schedule of proposed operations at least five (5) days prior to commencement of construction work.

3) Construction Observation. All of the work shall be subject to construction observation by the Town Engineer. Costs incurred by the Town for construction observation shall be reimbursed by Developer to the Town within sixty (60) days from the date of invoice.

4) Easements. Developer shall provide to the Town, at no cost to the Town, all permanent and temporary easements necessary for the installation of Public Improvements, as reasonably determined by the Town Engineer. All such easements requested by the Town Engineer shall be in writing and legally sufficient in form and substance to convey to the Town the required easement(s). If Developer is not able to obtain easements required by this article Developer shall notify the Town and may request that the Town exercise its power of eminent domain. If the Town elects to exercise its

power of eminent domain Developer will pay all costs incurred by the Town and associated with such exercise.

5) Insurance. Developer will furnish and will cause each person with whom Developer contracts for the construction and installation of any public improvements to furnish the Town with the same evidence of complete insurance coverage (including Workmen's Compensation, liability and Property damage) as is required on Town contracted construction jobs as determined by the general specifications now in use.

6) Faithful Performance of Construction Contracts; Warranty. Developer shall fully and faithfully comply with all terms of any and all contracts entered into by Developer for the installation and construction of all Public Improvements and hereby warrants the workmanship and materials of each Public Improvement for a period of 12 months after the Town issues its letter of construction approval under Section 5(f) below (the "Warranty"). Developer agrees to repair or replace, as and when directed by the Town, and at the Developers' sole cost and expense, any deficiencies noted by the Town during the Warranty period in accordance with Section 5(h) below.

Developer shall fully and faithfully discharge the Developer's obligation with respect to the Public Improvements during the installation and construction period and with respect to those that may arise as a result of the Developer's Warranty, and shall promptly and fully pay persons doing work, furnishing skills, tools, machinery, materials, insurance, equipment, or supplies in connection with the construction and installation of the public improvements, or in connection with any work thereon under the Warranty.

f) Security for Developer's Performance. Work shall not commence on any public improvements serving the Development until Developer has provided the Town Clerk with the following:

An irrevocable and unconditional Letter of Credit, issued by a financial institution reasonably approved by the Town, in an amount determined by mutual agreement of the Parties to be equal to the estimated total cost of the Public Improvements.

All Letters of Credit shall be in substantially the form attached hereto as Exhibit B, and shall provide that funds will be paid to the Town, upon written demand from time to time of the Town, to the extent of a default under Section 6 below by Developer in the making of payments or performing of obligations, to be paid or performed by Developer pursuant hereto. Each Letter of Credit shall further provide that ten percent (10%) of the Letter of Credit shall remain fully callable by the Town for a term of twenty-four (24) months after the date of the Town Engineer's issuance of a construction letter of approval for Public Improvements. The remaining 90% of each Letter of Credit shall be released upon the Town

Engineer's issuance of a construction letter of approval for Public Improvements. The Letter of Credit, if called, may be used to complete Public Improvements included in the Approved Plans and to repair, or replace Public Improvements, including any pre-existing public improvements, damaged by Developer's work.

If the Developer is in default hereunder as defined in Section 6 of this Agreement, the Town may draw on the Letter of Credit for the whole amount or any part thereof and hold the proceeds, without interest, and use the proceeds to pay for the costs incurred by the Town in performing and paying for any or all of the obligation of Developer in the installation of the Public Improvements that are not performed or paid for by Developer pursuant hereto, including all costs incurred by the Town, including, but not necessarily limited to attorney's fees, engineering, consultants and any in-house cost incurred, including time associated with work performed by the Public Works Department and other staff of the Town.

5. General Conditions.

a) Recording. This Agreement may be recorded by the Town with the Clerk and Recorder of Larimer County, Colorado and all recording fees, if any, shall be paid by Developer. Failure of the Town to record the Agreement shall not be in anyway treated as a waiver of any rights the Town would otherwise have.

b) Notices. Whenever in this Agreement it shall be required or permitted that notice or demand be given or served by any party to this Agreement to or on any other party, such notice or demand shall be delivered personally or mailed by United States mail to the addresses hereinafter set forth by certified mail (return receipt requested). Such notice or demand shall be deemed given when delivered personally or when deposited in the mail in accordance with the above. The addresses of the parties hereto are as follows, until change by notice given as above:

If to the Town, at:	Town Clerk Town of Wellington Post Office Box 127 Wellington, Colorado 80549
With a copy to	Wellington Town Attorney Attn. Brad March March and Olive, LLC 1312 S. College Avenue Fort Collins, CO 8024
If to Developer, at:	Poudre School District 2407 Laporte Ave Fort Collins, Colorado 805

With a copy to: Semple, Farrington, Everall & Case., P.C.
Attn. Darryl L. Farrington
1120 Lincoln Street, Suite 1308
Denver, CO 80203

c) Release of Security. Upon performance by Developer of the terms of this Agreement, including the expiration of any Warranty period herein and the performance by Developer of Developer's obligations herein with respect to any such Warranty, the Town will release to Developer the security filed with the Town pursuant hereto, or so much thereof as has not been used by the Town pursuant hereto.

d) Final Plan Approval. The Town has given final approval to the plat of the Development and this Agreement is executed and delivered by Developer to the Town, together with all required petitions, security, and upon fulfillment of the other conditions, if any, of the Town Board of Trustees.

e) Incorporation by Reference. All plans, special provisions, proposals, specifications and contracts for the public improvements furnished and let pursuant to this Agreement shall be and are hereby made a part of this Agreement by reference as if set out herein in full.

f) Construction Approval of Public Improvements. As soon as the Public Improvements are built in compliance with the Approved Plans and, to the extent they do not conflict with and are not inconsistent with the Approved Plans, Town of Wellington Standard Design Criteria and Construction Requirements required for the Development or any Development phase, Developer shall give notice to the Town requesting inspection to be made for construction approval. If the construction work complies with all requirements hereof and the Town Standards and Specifications, the Town will issue a letter of construction approval. Upon issuance of a letter of construction approval, the Developer shall provide "As Built" drawings for the public improvement in a form acceptable to the Town Engineer.

g) Dedication of Public Improvements. Developer shall dedicate in writing to the Town, all Public Improvements constructed or erected serving the Development, free and clear of all encumbrances or liens, said dedication(s) shall be legally sufficient in form and substance to convey said improvements to the Town. The dedication(s) shall be submitted to the Town at the time of requesting final acceptance of the Public Improvements required for the Development or any Development phase as provided below.

h) Final Acceptance of Public Improvements. A final inspection shall be required before final acceptance by the Town of the Public Improvements required for the Development. It is the Developer's responsibility to request final inspection not less than twenty-one (21) nor more than twenty-two (22) months from the date of the construction approval letter in Section 5(f) above. A list of deficiencies, if any, will be sent to Developer for correction. Within sixty (60) days of the Town issuing the list of deficiencies, Developer shall correct the deficiencies and notify the Town in writing that the deficiencies have been corrected. Upon receipt of such notice, another inspection shall be made when the improvements comply with all Town requirements, standards and Specifications, the Board of Trustees shall by resolution accept the public improvements required for the Development or any Development phase and issue a final acceptance letter stating that the improvements required for the Development or any Development phase have been accepted by the Board of Trustees for future maintenance and repair, and Developer shall be released from its Warranty obligations under Section 4(e) above.

6. Default. If Developer fails to fulfill the terms and conditions of this Agreement, including failure to correct Warranty defects, the Town of Wellington, in its sole discretion, may declare Developer in default and after giving thirty (30) days notice to Developer as provided herein, may call the security provided in Section 4.f) and exercise all remedies available to the Town. As an alternative to the Town calling the security, Developer may extend Developer Letter of Credit for an additional one year period (or such lesser time as agreed to by the Town and Developer) and, so long as Developer promptly commences and pursues correction of its default the Town will afford Developer a reasonable time to cure the default. Failure to comply with this Agreement shall further be sufficient cause for the Town to withhold building permits or certificates of occupancy until corrected to the satisfaction of the Town Engineer.

7. Indemnity. The Town shall have the right, but shall have no obligation or duty, to perform, or pay for the performance of, any of Developers' obligations hereunder concerning the construction and installation of Public Improvements, including, without limitation, payment of any subcontractors or suppliers of labor or materials, if and only if Developer is in default on such obligations and fails to cure the same as provided herein.

8. Agreement to Pay Attorney's Fees and Expenses. If either party should default under any provision of this Agreement the non-defaulting party may recover any costs incurred, including reasonable attorney's fees incurred in compelling the defaulting party's compliance with this Agreement. If either party commences litigation against the other party (the "Defendant") and does not substantially prevail in such litigation, the Court shall award costs and attorney's fees to the Defendant.

9. Severability. If any part, section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement.

10. Burden and Benefit to Development. This Agreement shall run with the land comprising the Development and shall be binding upon the parties hereto, their successors, grantees and assigns. It is agreed that all Improvements required pursuant to this Agreement touch and concern the Development regardless of whether such Improvements are located on the Development. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of Developer's real or proprietary interest in the Development, as well as any assignment of the Developer's rights to develop the Development under the terms and conditions of this Agreement.

11. Assignment. In the event Developer transfers title to the Development and is thereby divested of all equitable and legal interest in the Development, the Town hereby agrees to release said Developer from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding Development owner shall be bound by the terms of this Agreement. This Agreement shall be assignable by Developer.

NOTWITHSTANDING THE FOREGOING, NO OWNER (OTHER THAN THE DEVELOPER) OF ANY LOT OR OUTLOT WHICH HAS BEEN ISSUED A CERTIFICATE OF OCCUPANCY SHALL HAVE ANY PERSONAL LIABILITY FOR THE PERFORMANCE OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT AND SUCH LOT SHALL NOT BE SUBJECT TO ANY LIEN CREATED BY THE RECORDING OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

[Signature page follows]

TOWN OF WELLINGTON

____
Troy Hamman, Mayor

ATTEST:

____
____________________, Town Clerk

Approved as to form:

March and Olive, LLC
Town Attorney

By: ______________________________
J. Brad March

POUDRE SCHOOL DISTRICT R-1

____
Matt Bryant
Executive Director of Operations
Authorized Signatory (Board Resolution dated 11 June 2019 and recorded with the Larimer County Clerk and Recorder at Reception Number 20190032049)

EXHIBIT A
Property Description

DRAFT

EXHIBIT B
FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

Issue Date:

Letter of Credit Number:

Amount $__________________ (Lawful money of the United States.)

Expiration Date: __________________ [Expiration date MUST be a business day.]

[Beneficiary Name] (“Beneficiary”)
[Beneficiary Street Address]
[Beneficiary City, State & Zip]

RE: [Applicant Name], [Application Address] (“Applicant”)

Ladies and Gentlemen:

We hereby open this irrevocable standby Letter of Credit in favor of the Beneficiary at the request and for the account of the Applicant. The purpose of this letter is to secure the performance of and the compliance with Beneficiary-approved construction plans (the “Plans”) related to the Applicant’s new school project, which Plans require off-site infrastructure improvements consisting of pavement, curb, gutter, signage & striping, streetlights, a fire department approved turnaround and all other appurtenances set forth in the Plans (the “Public Improvements”), as required by the Public Improvements Agreement between the Applicant and Beneficiary dated _________, 2020 (the “Agreement”). This Letter of Credit is available for payment of Beneficiary’s drafts drawn at sight on us in an aggregate amount not to exceed the amount stated above and accompanied, in the case of each draft, by the following:

> A written statement addressed to us, purportedly signed by an authorized representative of Beneficiary stating: “Beneficiary, by the signature of the authorized signatory set forth below, hereby certifies that Applicant has failed to perform with, or comply in accordance with, the provisions of the Plans as required by the Development Agreement between the Applicant and Beneficiary dated _________, 2020 (the “Agreement”), and states that Applicant is obligated to pay to Beneficiary the amount demanded as provided in the Agreement, and that Beneficiary has complied with all requirements and conditions of the Agreement, including notice to Applicant and an opportunity to cure. A true copy of the notice which was mailed to Applicant by certified mail on ________, 20__, is attached hereto.”

- This original Letter of Credit and any amendments that may be in existence.

Drafts must be marked "Drawn under Irrevocable Standby Letter of Credit No. ________, dated ___________________, issued by____".

We hereby agree to honor each draft drawn under and in compliance with the terms of this Letter of Credit if duly presented at: ____, on the expiration date.

Pursuant to U.S. law, we are prohibited from issuing, transferring, accepting or paying letters of credit to any party or entity identified by the Office of Foreign Assets Control, U.S Department of Treasury, or subject to the Denial of Export Privileges by the U.S. Department of Commerce.
Letter of Credit Number: _________________
Issue Date: ____________________________
Page 2 of 2

This Letter of Credit sets forth in full our undertaking and such undertaking shall not in any way be modified, amplified or limited by reference to any document, instrument or agreement referred to in this Letter of Credit, excepting only U.S. law, the governing law and the UCP referred to herein and any such reference shall not be deemed to incorporate herein any reference to a document, instrument or agreement.

Except as expressly stated herein, this Letter of Credit is governed by the laws of the State of Colorado, including, without limitation, the Uniform Commercial Code as adopted by the State of Colorado, as from time to time amended and enforced (the "Governing Law"), without regard to any conflict of law principles. This Letter of Credit Agreement shall be further subject to the Uniform Customers and Practice for Documentary Credits, 2007 Revision-ICC Publication No. 600, and any revisions thereto (the "UCP") and, in the event any provision of the UCP is or shall be construed to vary from or be in conflict with any provision of the Governing Law, the Governing Law shall prevail.

Sincerely,

Bank NAME

By:_________________________________
Printed Name:________________________
Title:_______________________________

c: [Borrower/Applicant Name]

EXHIBIT C
Estimated Cost of Public Improvements

Pursuant to Section 4.f) above, estimated total costs for the below listed Public Improvements are attached on subsequent pages and are incorporated fully as if referenced herein.

County Road 62E:
Asphalt/Striping = $400,000
Sanitary = $675,000
Water = $580,000
Traffic Control = $45,000
Survey = $25,000
Concrete = $550,000

County Road 9:
Asphalt/Striping = $435,000
Sanitary added next to roadway = $450,000
Traffic Control = $35,000
Survey = $15,000
Concrete = $350,000

Board of Trustees Meeting

Date: October 13, 2020
Submitted By: Cody Bird, Planning Director
Subject: Resolution 36-2020: A Resolution Finding Substantial Compliance for Annexation of Property into the Town of Wellington and Establishing a Public Hearing

- **Staff presentation: Cody Bird, Planning Director**

EXECUTIVE SUMMARY

The owner of property on the east side of 6th Street, and north of Sveta Dr. (location map attached) has petitioned for annexation of the property into the Town of Wellington. Annexation of property into the municipal Town limits requires the Town to follow a process outlined in State statutes, further outlined below. The first step in the annexation process includes identifying if the petition submitted by owner is in substantial compliance with the statutes and other applicable State and Town requirements. Town staff has reviewed the petition and supporting materials and recommends that substantial compliance is met. A resolution finding substantial compliance and setting the date for a public hearing is attached for the Board's consideration.

BACKGROUND / DISCUSSION

The owner of property at 7860 6th Street has petitioned for annexation into the Town of Wellington.

The first step in the process of annexation is to determine that the petition for annexation is in substantial compliance with State statutes, including the Municipal Annexation Act of 1965 and other applicable State and Town requirements.

Town staff has reviewed the annexation petition and supporting materials provided and found them to be in substantial compliance with the applicable State and Town requirements.

If the Board finds that the petition is in substantial compliance, the Board will adopt a resolution (draft attached) and set the date for a public hearing to formally consider the petition.

- Town staff and the applicant will provide the required notices, including advertising the public hearing.
- The Planning Commission will be notified of the annexation petition to consider the proposed annexation and make a recommendation to the Board of Trustees.
- The Board will then hold the public hearing at the established date and time and hear any public testimony presented.
- Following the public hearing, the Board may choose to adopt an ordinance annexing the property into the Town of Wellington and enter into an annexation agreement with the property owner.

STAFF RECOMMENDATION

Adopt a resolution finding substantial compliance of an annexation petition to annex the Lamb Annexation into the Town of Wellington and establish the required public hearing for December 8, 2020.

ATTACHMENTS

1. Location Map
2. Resolution

Location Map

Lamb Annexation

RESOLUTION NO. 36-2020

A RESOLUTION BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO FINDING SUBSTANTIAL COMPLIANCE OF AN ANNEXATION PETITION TO ANNEX A PART OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 9 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CURRENTLY WITHIN THE UNINCORPORATED PARTS OF LARIMER COUNTY, AND ESTABLISHING THE DATE, TIME AND PLACE FOR PUBLIC HEARING.

WHEREAS, a petition for annexation of a certain property described as being a part of the Southwest Quarter of Section 34, Township 9 North, Range 68 West of the 6th Principal Meridian, and proposed to be known as the Lamb Annexation, has been filed with the Town Clerk of the Town of Wellington, Colorado; and

WHEREAS, the Clerk has referred this petition to the Wellington Board of Trustees on this date as a communication; and

WHEREAS, the Board of Trustees has reviewed the petition and desires to adopt by resolution its findings in regard to the petition and other annexation requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO:

Section 1. The Board of Trustees hereby finds that the area proposed for annexation, which is described as a part of the Southwest Quarter of Section 34, Township 9 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, and more particularly described in **Exhibit A**, incorporated herein by reference, is in substantial compliance with eligibility requirements for annexation under Colorado Revised Statutes ("C.R.S.") §§31-12-104 and 31-12-105, as evidenced by the following allegations:

a) Not less that one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality;
b) A community of interest exists between the area to be annexed and the annexing municipality, as evidenced by its contiguity and its existence within the Wellington Community Growth Management Area, as defined by the Town's Comprehensive Master Plan;
c) The area proposed to be annexed will be urbanized in the near future;
d) The area is capable of being integrated with the annexing municipality.

Section 2. The Board of Trustees hereby finds the petition, which is attached hereto as **Exhibit B** and incorporated herein by reference, is in substantial compliance with C.R.S. §31-12-107(1), specifically:

a) The petitioners allege that it is desirable and necessary that such area be annexed to the municipality;
b) The petitioners allege that the area does not violate the limitations set forth in C.R.S. §§31-12-104 and 31-12-105 and the petition meets the requirements therein;

c. The petitioners allege that the signatures of the petition on the petition comprise the landowners of more than 50 percent (50%) of the territory included in the area proposed to be annexed, exclusive of streets and alleys;

d. The petitioners request that the annexing municipality (the Town of Wellington) approve the annexation of the area proposed to be annexed.

Section 3. No election is required under C.R.S. §31-12-107(2).

Section 4. The Clerk is directed to immediately refer this petition to the Town Planning Commission.

Section 5. A hearing date for this annexation before the Board of Trustees has been set as follows:

December 8, 2020
6:30 p.m.
Virtual Web Conference
Meeting Link Provided on the Published Meeting Agenda

INTRODUCED, PASSED AND ADOPTED ON THE ______ DAY OF ___________, 2020 BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, LARIMER COUNTY, COLORADO.

____
Troy Hamman, Mayor

ATTEST:

____
Krystal Eucker, Town Clerk

APPROVED AS TO FORM

March & Olive, LLC
Town Attorney

By: ______________________________
J. Brad March

EXHIBIT A

LEGAL DESCRIPTION – LAMB ANNEXATION

A TRACT OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 9 NORTH, RANGE 68 WEST OF THE 6^{TH} P.M., COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 34, AND CONSIDERING THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34 TO BEAR NORTH 01°20'38" EAST WITH ALL BEARINGS RELATIVE THERETO;

THENCE NORTH 01°20'38" EAST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34 A DISTANCE OF 455.99 FEET;

THENCE SOUTH 88°35'02" EAST A DISTANCE OF 30.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SIXTH STREET, SAID POINT ALSO BEING THE POINT OF BEGINNING.

THENCE NORTH 01°20'38" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF SIXTH STREET, A DISTANCE OF 427.47 FEET;

THENCE SOUTH 88°35'02" EAST A DISTANCE OF 115.68 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25;

THENCE SOUTH 16°29'29" WEST ALONG THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 25, A DISTANCE OF 442.70 FEET TO THE POINT OF BEGINNING.

THE PARCEL OF LAND DESCRIBED ABOVE CONTAINS 24,725 SQUARE FEET (0.57 ACRES), MORE OR LESS, AND IS SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

EXHIBIT B

PETITION FOR ANNEXATION OF UNINCORPORATED TERRITORY IN THE COUNTY OF LAIRMER, STATE OF COLORADO TO THE TOWN OF WELLINGTON, COLORADO

LAMB ANNEXATION

The undersigned, in accordance with Article 12, Title 31, CRS, as amended, hereby petition the Town Board of the Town of Wellington, Colorado, for annexation to the Town of Wellington the incorporated territory more particularly described below, to be known as **Lamb Annexation**, and in support of said Petition, the Petitioners allege that:

1. It is desirable and necessary the following described territory be annexed to the Town of Wellington, Colorado;

   See Attached Exhibit "A"

2. Not less than one-sixth (1/6) of the perimeter of each of the parcel(s) proposed to be annexed are contiguous with the Town of wellington, Colorado;

3. A community of interest exists between the territory proposed to be annexed and the Town of Wellington, Colorado;

4. The territory to be annexed in urban or will be urbanized in the near future;

5. The territory proposed to be annexed is integrated or is capable of being integrated with the Town of Wellington, Colorado;

6. The signature of the Petition: (i) comprise of the landowners of more than fifty percent (50%) of the territory in the area proposed to be annexed, exclusive of streets, alleys and/or rights of way; and (ii) and hereby request that the Town of Wellington approve the annexation of the area proposed to be annexed;

7. No land help in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate:

   (a) Is divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless said tracts or parcels are separated by a dedicated street, road or other public way;

(b) Comprising of .87 acre and which, together the building and improvements situated thereon has an assessed value in excess of One Hundred Ninety Thousand and Seven Hundred Dollars ($190,700) for ad valorem tax purposes for the year preceding the annexation, is included within the territory proposed to be annexed without the written consent of the landowner or landowners.

8. No part of the area proposed to be annexed is more than three miles from a point on the municipal boundary, as such was established more than one year before this annexation will take place;

9. The area proposed to be annexed is located within Larimer county, the Poudre R-1 school District, Wellington Fire Protection District, the Northern Colorado Water Conservancy District, Boxelder Stormwater District, and the Health District of Northern Larimer County;

10. The mailing address of each signer, the legal description of the land owner by each signer and the date of signing of each signature are all shown on this petition;

11. Accompanying this petition are four (4) copies of the annexation map containing the information required under the Town of Wellington Annexation Submittal Checklist.

12. The territory to be annexed is not presently a part of any incorporated city, city and county, or town;

13. The undersigned and the Town intend on entering into and Annexation and Development Agreement with the Town of wellington prior to the effective date of this annexation, the terms and conditions of which agreement shall be additional conditions as effectively as if set forth in full in this petition.

14. Unless otherwise agreed upon by petitioners and the Town of Wellington in the Annexation and Development Agreement, the undersigned agree to the following conditions, which shall be covenants running with the land, and which shall, at the option of the Town, appear on the annexation map;

a. Water rights shall be provided pursuant to Town ordinance;
b. The territory to be annexed shall be included in the Municipal Sub-district of the Northern Colorado Water Conservancy district;
c. The owners shall participate in providing drainage plans and improvements and payment of a unit drainage fee as may be required by the Town for the area;
d. Future development of the property shall be subject to payment of the capital expansion fees pursuant to the Wellington Municipal code;
e. The undersigned and the Town may enter into a Pre-Annexation Agreement prior to the effective date of this annexation, which agreement shall be additional conditions as effective as if set forth in this petition;
f. Future provision of electrical services within the annexed territory are subject to a surcharge as provided in the Wellington Municipal Code; and
g. Any development with in annexed territory shall comply with the Town of Wellington Comprehensive Master Plan.

15. Petitioners reserve the right to withdraw the Annexation Petition at any time prior to the effective date of the ordinance annexing the property.

16. The Petition of annexation may be executed in multiple counterparts, each of which shall constitute an original but all of which, taken together, shall constitute one and the same document.

Therefore, the undersigned hereby request that the Town of Wellington approve the annexation of the area described.
In addition of the annexation, the undersigned request the zoning of R-2 Residential District for the above described property.

EXECUTED this 14th **day of** ~~Oc~~ September **2020.**

Owner(s):
Linda Lamb

By: Linda Lamb
Linda Lamb

Title: Owner

Address: PO BOX 37
Wellington, CO 80549

STATE OF COLORADO)
) SS.
COUNTY OF LARIMER)

The foregoing Petition of Annexation was subscribed and sworn to before me this 14th **day of** September **A.D., 2020, by** Linda Lamb **as owner of property.**

Witness my hand and official seal.

My commission expires: June 14th 2023.

Bonnie Jean Thomas
Notary Public

BONNIE JEAN THOMAS
Notary Public
State of Colorado
Notary ID # 2011402[illegible]
My Commission Expires 06-14-2023

Exhibit "A"
Property Description
Lamb Annexation
To the Town of Wellington

TR IN SW OF 34-9-68, BEG 452.93 FT N OF SW COR SD SEC; TH N 430.48 FT; TH E 146.47 FT; TH S 15 08' 20" W 445.96 FT; TH W 30 FT TPOB; LESS CNTY RD ROW ON W 30 FT

INITIATIVE PETITION

Petition Section ___

<u>WARNING: IT IS AGAINST THE LAW:</u>

For anyone to sign any initiative or referendum petition with any name other than his or her own or to knowingly sign his or her name more than once for the same measure or to knowingly sign a petition when not a registered elector who is eligible to vote on the measure.

DO NOT SIGN THIS PETITION UNLESS YOU ARE A REGISTERED ELECTOR AND ELIGIBLE TO VOTE ON THIS MEASURE.

TO BE A REGISTERED ELECTOR, YOU MUST BE A CITIZEN OF COLORADO AND REGISTERED TO VOTE.

Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

Full Text of Measure:

Be it enacted by the Town of Wellington:

Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington

WHEREAS, in November 2012, Colorado voters approved Amendment 64 to the Colorado Constitution ("Amendment 64"), codified as Section 16 of Article XVIII of the Colorado Constitution, concerning the personal use and regulation of marijuana; and

WHEREAS, Amendment 64 generally allows persons twenty-one years of age or older to consume or possess limited amounts of marijuana and provides for the licensing of marijuana cultivation facilities, product manufacturing facilities, testing facilities and retail stores; and

WHEREAS, Amendment 64 further provides that local governments may adopt their own regulations governing certain aspects of marijuana-related businesses; and

WHEREAS, the Town of Wellington would benefit from the presence of retail and medical marijuana stores so that adults can safely purchase retail and medical marijuana and the Town can generate additional tax revenue.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO OR THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON, COLORADO, THAT:

Section 1. Article 13.6 of Chapter 2 of the Wellington Municipal Code is hereby repealed in its entirety.

Section 2. A new Article 14 is hereby added to Chapter 2 of the Wellington Municipal Code and shall read as follows:

Article 14 – RETAIL AND MEDICAL MARIJUANA STORES

Sec. 14-10 Purpose.

A. The Board of Trustees hereby declares that this Article shall be deemed an exercise of the police powers of the Town for the protection of the economic and social welfare and the health, peace, and morals of the people of the Town.

B. The Town further declares that it is unlawful to cultivate, manufacture, distribute, or sell Retail Marijuana or Medical Marijuana, except in compliance with the terms, conditions, limitations, and restrictions set forth in this Chapter, Section 16 of Article XVIII of the State Constitution and Article 43.4 of Title 12, C.R.S. (the Colorado Retail Marijuana Code) or Article 43.3 of Title 12, C.R.S. (the Colorado Medical Marijuana Code).

Sec. 14-20 Powers and Duties of the Local Licensing Authority.

A. The Local Licensing Authority shall grant or refuse local Licenses for the sale of Retail Marijuana or Medical Marijuana as provided by law; suspend, fine, restrict, or revoke such Licenses upon a violation of this Article or a rule promulgated pursuant to this Article; and may impose any penalty authorized by this Article or any rule promulgated pursuant to this Article. The Local Licensing Authority may take action with respect to a License accordance with the procedures established pursuant to this Article.

B. The Local Licensing Authority shall promulgate such rules and make such special rulings and findings as necessary for the proper regulation and control of the distribution and saleof Retail Marijuana and for the enforcement of this Article.

C. The Local Licensing Authority hereby adopts the minimum licensing requirements of Article 43.4 of Title 12 C.R.S. to apply to the issuance of a Retail Marijuana Store License.

D. The Local Licensing Authority hereby adopts the minimum licensing requirements of Article 43.3 of Title 12 C.R.S. to apply to the issuance of a Medical Marijuana Store License.

E. On and after January 1, 2021, the Local Licensing Authority shall begin processing applications under this Chapter, and shall process the applications in the order they are received. The Local Licensing Authority shall administratively approve any License application under this Chapter so long as the conditions set forth in this Chapter are met and the applicant has paid the operating fee and any other fees required by this Chapter.

F. Notwithstanding any of the foregoing, if the Local Licensing Authority received any applications submitted to the State Licensing Authority for a Retail or Medical Marijuana store in the Town prior to the effective date of this ordinance, any such applications shall be deemed "received" for purposes of establishing priority under this section, as long as the application either remains active with the State Licensing Authority or is re-submitted in substantially similar form to the State Licensing Authority within 15-days after the effective date of this ordinance.

Sec. 14-30 Definitions.

Any word or term used that is defined in any of the following provisions shall have the same meaning that is ascribed to such word or term as used in the following provisions: Article XVIII, Section 16 (2) of the Colorado Constitution; the Colorado Retail Marijuana Code, C.R.S. §12- 43.4-101, *et seq.;* Article XVIII, Section 14 (l)(f) of the Colorado Constitution; C.R.S. §25-1.5- 101, *et seq.;* or the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, *et seq.*.

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

License: A license or registration granted pursuant to this Article.

Licensed Premises: The premises specified in an application for a License under this Article, which are owned or in possession of the Licensee and within which the Licensee is authorized to distribute, or sell Retail Marijuana in accordance with the provisions of the Colorado Retail Marijuana Code.

Licensee: A person licensed or registered pursuant to the Colorado Retail Marijuana Code and this Article.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

Location: A particular parcel of land that may be identified by an address or other descriptive means.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

Sec. 14-40 Applications-Licenses.

A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.

B. Application Forms. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.

C. Other Requirements. An applicant shall file, at the time of application for a License, plans and specifications for the interior of the building, and shall also include at the time of application proof of possession of the real property where the building is or will be located.

Sec. 14-50 Denial of Application.

A. The Local Licensing Authority shall deny a Local License only if the premises on which the applicant proposes to conduct its business do not meet the requirements of this Article.

B. If the Local Licensing Authority denies a Local License, the Applicant shall be entitled to a hearing pursuant to this Article. The Local Licensing Authority shall provide written notice of the grounds for denial of the Local License to the applicant.

C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

Sec. 14-60 Persons Prohibited as Licensees.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

A. The Local Licensing Authority shall not receive or act upon an application for the issuance of a State or Local License pursuant to this Article:

1. Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

2. For a Location in an area where the sale of Retail or Medical Marijuana as contemplated is not permitted under the applicable zoning laws, which restrictions shall be as follows (and the Town's zoning laws shall be amended as follows):

   Retail or Medical Marijuana stores shall only be permitted in the C-3 zoning district. In addition, the following setbacks will apply: Retail or Medical Marijuana stores shall not be permitted to be located within two-thousand (2,000) feet of: any parcel containing a school; and Retail or Medical Marijuana stores shall not be permitted to be located within five-hundred (500) feet of: parcels zoned P (Public District) or any parcel containing another Retail or Medical Marijuana store; and Retail or Medical Marijuana stores shall not be permitted to be located within two-hundred (200) feet of: parcels zoned R-1 (Residential District), R-2 (Residential District) or R-4 (Residential District).

B. In addition to the requirements of C.R.S. §12-43.4-301, the Local Licensing Authority shall consider the evidence and make a specific finding of fact as to whether the building in which Retail or Medical Marijuana is to be sold is located within any distance restrictions established by, or pursuant to, this section.

C. The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.

Sec. 14-80 Transfer of Ownership.

A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. §12-43.4-309.

B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed $1,000 to process such transfer.

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-

309 and this Article.

Sec. 14-100 Licensing Renewal.

A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day time requirement set forth in this Article. The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application.

B. 1. Notwithstanding the provisions of subsection (A) of this Section, a Licensee whose License had been expired for not more than thirty (30) days may file a late renewal application upon the payment of a nonrefundable late application fee of five hundred dollars ($500.00) to the Local Licensing Authority. A Licensee who files a late renewal application and pays the requisite fees may continue to operate until both the State and Local Licensing Authorities have taken final action to approve or deny the Licensee's Late Renewal Application.

2. Notwithstanding the amount specified for the Late Application Fee, the State and Local Licensing Authority by rule or as otherwise provided by law may, in its discretion, reduce the amount of the fee.

Sec. 14-110 Fees.

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars ($1,500.00).

Sec. 14-120 Hours of Operation.

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

Sec. 14-130 Disciplinary Actions: Suspension-Revocation-Fines.

A. In addition to any other sanctions prescribed by the State Licensing Authority, the Local Licensing Authority has the power, on its own motion after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard; to suspend or revoke a License issued by the Local Licensing Authority for a violation specified in subsection (B) below. The Local Licensing Authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing.

B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:

   a. The public welfare and morals would not be impaired by permitting the Licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

   b. The books and records of the Licensee are kept in such a manner that the loss of sales that the Licensee would have suffered had a suspension gone into effect can be determined with reasonable accuracy; and

   c. The Licensee has not had his or her License suspended or revoked during the 12-months immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the License.

2. The fine accepted shall be: (a) not less than five-hundred dollars ($500.00) nor more than two thousand five-hundred dollars ($2,500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars ($1,000.00) nor more than ten-thousand dollars ($10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.RS. §12-43.4-901(4)(e).

3. Payment of a fine shall be in the form of cash or in the form of a certified check or cashier's check made payable to the Local Licensing Authority, whichever is appropriate.

D. Upon payment of the fine, the Local Licensing Authority shall enter its further order permanently staying the imposition of the suspension. If the fine is paid to a Local Licensing Authority, the governing body of the Authority shall cause the moneys to be paid into the General Fund of the Local Licensing Authority.

E. If the Local Licensing Authority does not make the findings required in this Section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Local Licensing Authority.

Sec. 14-140 Inspection of Books and Records-Inspection Procedures.

A. Each Licensee shall keep a complete set of all records necessary to show fully the business transactions of the Licensee, all of which shall be open at all times during business hours for the inspection and examination by the Local Licensing Authority or its duly authorized representatives. The Local Licensing Authority may require any Licensee to furnish such information as it considers necessary for the proper administration of this Article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary.

B. The Licensed Premises, including any places of storage where Retail or Medical Marijuana is stored, sold or dispensed shall be subject to inspection by the Local Licensing Authorities and their investigators, during all business hours for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the Licensees, access shall be required during business hours. Where any part of the Licensed Premises consists of a locked area, upon demand to the Licensee, such area shall be made available for inspection without delay, and, upon request by authorized representatives of the State or Local Licensing Authority, the Licensee shall open the area for inspection.

C. Each Licensee shall retain all books and records necessary to show fully the business transactions of the Licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 14-150 Licensing Authority Established.

There is hereby established a Local Licensing Authority to issue only the following Medical and Retail Marijuana Licenses upon payment of a fee and compliance with all Local Licensing requirements to be determined by the Local Licensing Authority as set forth in Article 43.3 and 43.4 of Title 12, C.R.S.:

1. A Medical Marijuana Center License.
2. A Retail Marijuana Store License.

Sec. 14-160 Other Marijuana Licenses Prohibited.

Except for the specific licenses the Local Licensing Authority is authorized to issue pursuant to this Article, no other retail or medical marijuana licenses may be issued, including licenses for marijuana cultivation facilities, marijuana testing facilities, or marijuana products manufacturers.

Section 3. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 4. All the provisions of the Wellington Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

Section 5. The Town Clerk shall certify the passage of this Ordinance and cause notice of its contents and passage to be published or posted. This Ordinance shall become effective immediately upon adoption or passage by the voters.

Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate by name and mailing address two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

1. Amie Rakoczy 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123

2. Tim Morgen 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123

INITIATIVE PETITION

Petition Section ___

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SUMMARY: The proposed initiative seeks to remove the prohibition of medical and retail marijuana sales in the Town of Wellington.

1. ______________ Printed last name ______________ Printed first name ______________ Date of Signing

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1. Amie Rakoczy 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123
2. Tim Morgen 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123

AFFIDAVIT OF PETITION CIRCULATOR

I, ______________________________, hereby certify that:

1. I have read and understand the laws governing circulations of petitions in Colorado;

2. I was eighteen years of age or older at the time this section of the petition was circulated and signed by the listed electors;

3. I circulated this section of the petition;

4. Each signature thereon was affixed in my presence;

5. Each signature thereon is the signature of the person whose name it purports to be;

6. To the best of my knowledge and belief, each of the persons signing this petition section was, at the time of signing, a registered elector;

7. I have not paid or will not in the future pay and I believe that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition; and

8. I currently reside at the following address:

Street Address: ____

City, State, Zip Code: _________________________________

County: ____

FURTHER, Affiant sayeth not.

____

[printed name of circulator]

STATE OF COLORADO)
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ___day of __________________, 2020, by ______________________________.

Witness my hand and official seal.

My commission expires:__________________

____

Notary Public

Memo

March & Olive, LLC

TO: Kelly Houghteling, Interim Town Administrator; Krystal Eucker, Wellington Town Clerk; Wellington Town Board

FROM: Brad March
March and Olive, LLC
1312 S. College Avenue, Fort Collins, CO
970-482-4322(p); 970-482-5719(f)

RE: Initiated election petitions

DATE: September 6, 2020

This memorandum is intended to summarize the status of the citizen proposed initiated marijuana ordinances (the Initiated Ordinances) and the election likely required as a result of the filing of the initiative petitions. Unfortunately, it was discovered late Friday (9/4) that one of the timeline dates as set out in CRS **§ 31-10-108**[1]**,** related to scheduling a special election was not met.

The clerk has provided a list of dates which the statute keys to, dates include:
July 30, 2020 – Petition submission date
August 20, 2020 – Statement of sufficiency issued.
Nov 3, 2020 – General election date

Assuming that the Board does not adopt the citizen proposed ordinances, the statutory scheme requires that the ordinances be sent on to the voters. Based on cost considerations a recommendation was made to the board that the town schedule its own special election on the same day as the general election to allow the voters to determine whether the initiated ordinances would be adopted. The statute provides that a special election by mail in ballot may be held at the same time as the general election, but the election must be called at least 60 days before November 3rd[2]. That is, the election needed to be called before September 4th. The clerk prepared resolutions to call the special election to be presented to the Board on September 8th, the date however was unfortunately outside the sixty (60) day limit set by the statute. As the general election date cannot be met, the election date cannot be held until 32 days after the general election or, December 7, 2020. The TABOR election cannot be held until later in 2021 and is discussed further below.

Board action of proposed ordinances or forwarding to voters. CRS 31-11-104 provides that a proposed /initiated ordinance may be adopted by the town board as an ordinance of the town within 20 days of a finding of sufficiency by the clerk. This provision allows the board to adopt the Initiated Ordinance

[1] See clerk memo for text of statute.
[2] 31-10-108

without alteration on or before September 8th . If the board does not act and the Initiated Ordinance is not adopted, the ordinance must be submitted to the voters not less than 60 days and not more than 150 days after the clerk's statement of sufficiency is issued.[3] By y calculation this requires the election to be held no later than January 17, 2021.

Protest. By 21-11-110(1) Any registered elector who resides in the municipality may file, a protest <u>in writing under oath</u> with the clerk, challenge the sufficiency of the petition, setting forth specifically the grounds for such protest. The protest must be filed within 40 days after the initiative petition was originally filed with the clerk. The protest period will expire on September 8th.[4] The grounds for a protest may include, <u>but are not limited to,</u> failure of the petition or circulator to meet the requirements of the article. A resolution has been prepared and will be submitted to the board on September 8th for approval, designating the municipal judge, rather than the clerk as the hearing officer to hear any protest. If a protest is filed, the hearing officer's decision can be appealed to the Larimer County courts.

Sales tax and TABOR. Colorado law allows municipalities, in addition to charging the municipality's normally charged sales tax and taxes apportioned by the state [5] to charge a special retail marijuana sales tax.[6] The second proposed Initiated Ordinance provides that the Town would initially charge a 3.5% special sales tax, which could be increased by the Board to as much a 5% special sales tax. Under TABOR and the terms of the special sales tax statute tax increase measures must be approved by the voters and can only be submitted to the electorate at specified times. The TABOR amendment[7] at part 3(a) provides:

> *Ballot issues shall be decided in a state general election[8], biennial local district election, or on the first Tuesday in November of odd-numbered years. [D]istricts[9] may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.*

The special sales tax statutory provision likewise provides:

§ 29-2-115. Retail marijuana sales tax - county - municipality - election - legislative declaration - definition

(4) (a) Each municipality in the state is authorized to levy, collect, and enforce a municipal special sales tax upon all sales of retail marijuana and retail marijuana products…

(b) No special sales tax shall be levied pursuant to subsection (4)(a) of this section until the proposal has been referred to and approved by the eligible electors of the municipality in accordance with article 10 of title 31. Any proposal for the levy of a special sales tax in accordance with subsection (4)(a) of this section must be submitted to the eligible electors of the municipality on the date of the state general election, on the first Tuesday in November of an odd-numbered year, or on the date of a municipal biennial election. Any election on the proposal must be conducted by the clerk of the municipality in accordance with the "Colorado Municipal Election Code of 1965", article 10 of title 31.

Because of the 31-10-108 scheduling issue surrounding the special meeting it is not possible to present the special tax to the voters at the upcoming general election. The first opportunity to place the issue of the special tax before the voters would be November 2, 2021, the first Tuesday in November of the odd-numbered year.

Circulator petitions. A question was raised with me as to whether the petitioners complied with 31-11-113. I was not asked to review the full petition submissions and do not know whether the report required by 31-11-113 was turned into the clerk at the time the fully signed Initiated Ordinances were filed with the Clerk's office or, if filed, whether the report was sufficient under the statute. The statute provides that the proponents must file a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing is to be made at the same time the signatures on the Initiated Ordinance(s) are filed. I have had concerns surrounding the enforceability of the 31-11-113 requiring the report but, the statutory requirements, although perhaps suspect, remain a part of the statutory scheme for filing citizen-initiated ordinances and should have been complied with.

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[3] This is subject to the requirements of 31-10-108 that no special election may be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of the general election unless a mail ballot election is approved as a special election 60 days before the general election.

[4] 31-11-110

[5] Title 39, Article 28, Part 2

[6] 29-2-15.

[7] Constitution Article X sec 20

" § 1-1-104 (17) General election" means the election held on the Tuesday succeeding the first Monday f November in each even-numbered year.

31-10-101(10) Municipal election - Regular election" means: (a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place; (b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109(1), in which case "regular election" means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

[9] For purposes of TABOR the Town is a district.

The validity of placing restrictions on circulators has been the subject of challenges before various courts, most notably the United States Supreme Court in Buckley v. American Constitutional Law Foundation, 119 S.Ct. 636, 525 U.S. 182, 142 L.Ed.2d 599, 67 U.S.L.W. 4043 (1999). The Buckley case involved the state's initiative process[10] and dealt with required disclosure of paid circulator identities and other paid circulator information. The legislature did not change/modify the requirements of 31-11-113 after Buckley. [11])

The statute that requires the report that is to be filed with the clerk was adopted in 1995, before the Buckley decision. The statute only requires disclosure of the amount paid per signature and the amount paid to circulate and does not require that the amount paid to each circulator be disclosed. The report requirement may be enforceable after Buckley[12] [13]

Petition deficiencies. I have reviewed the form of the petitions with an agent of the Colorado Department of Revenue Marijuana Enforcement Division who characterized the form of the petitions, specifically the petition allowing for marijuana sales, as "a mess." The most noted concern is that the Initiated Ordinance's proposed Article 14 references the Colorado's Medical Marijuana Code as being codified at Title 12 Article 43.3 and Retail Marijuana Code as being codified at Title 12 Article 43.4. At section 14-10 the Initiated Ordinance recites that Retail Marijuana and Medical Marijuana may only be sold as allowed by the "Colorado Retail Marijuana Code" and the Colorado Medial Marijuana Code. The Colorado Retail Marijuana and the Colorado Medial Marijuana Code are currently embodied in state statutes at Title 44 article 11 (as opposed to Title 12 Article 43.3) as the Colorado Medical Marijuana

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[10] State initiative process at 1-40-101 et seq, municipal initiative proves at 31-11-101 et seq.

[11] The majority opinion of the court stated - we agree with the Court of Appeals appraisal: Listing paid circulators and their income from circulation "forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts," 120 F. 3d, at 1105;[24] no more than tenuously related to the substantial interests disclosure serves, Colorado's reporting requirements, to the extent that they target paid circulators, "fai[l] exacting scrutiny."

- [12] For other cases involving similar initiated petition circulator issues see Independence Inst. v. Gessler, 936 F. Supp. 2d 1256 (D. Colo. 2013), signature compensation for petition circulators violates the first amendment of the United States constitution; Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999); requirement that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression; Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999) Badge requirement is unenforceable. Meyer v. Grant, 108 S.Ct. 1886, 486 U.S. 414, 100 L.Ed.2d 425, 56 U.S.L.W. 4516 (1988), state may not prohibit paid circulators.

[13] Justice Thomas in his concurrence to the Buckley decision notes: "Even assuming that Colorado has a compelling interest in identifying circulators, its law does not serve that interest. The State requires that proponents identify only the names of *paid* circulators, not *all* circulators. The interest in requiring a report as to the money paid to each circulator by name, as the majority points out, *ante,* at 201, has not been demonstrated.

Code and Title 44, Article 12 (as opposed to Title 12 Article 43.4) as the Colorado Retail Marijuana Code. The Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code are to be replaced effective January 1, 2021 (the date the proposed ordinance goes into effect) and the governing statutes will be located at title 44, Article 10, and the designation as the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code will be eliminated and the code will be titled as the "Colorado Marijuana Code"[14].[15] Throughout the Initiated Ordinance's proposed new Article 14 to the Town Code the incorrect citations are referenced. For example, the proposed Sec 14-20, C and D provide that the Local Licensing Authority adopts the minimum licensing requirements of Title 12, Article 43.4 and 43.3. No such minimum standards exist that correspond to these citations. Further, the initiated ordinance, including at Sec 14-20 provides for a Local Licensing Authority and recites actions that are being taken by the local Licensing Authority when no Local Licensing Authority has been created by the Town[16]. The following references are to concerning provisions of the Initiated Ordinance proposed code (identified as SEC 14-**) and corresponding concerns with the concerns indented below each quoted Initiated Ordinance section.

Proposed Sec 14-30 defines:

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

CRS 44-10-311(d)(II) The distances referred to in this subsection (1)(d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route

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[14] Marijuana Code was re-codified in 2018 by HB1023 and is now found at Title 44, articles 11 and 22 of the Colorado statutes and in 2019 by SB 19-224 and as of January 1, 2021 will be effective at Title 44 Article 10.

[15] See also references to Colorado Medical Marijuana Code and Colorado Retail Marijuana code with statutory cites as Sec 1-30 definitions.

[16] By the Initiated Ordinance the Licensing Authority is created by Sec 14-150 Can the voters create the Local Licensing Authority and in the same initiated action act for the Licensing authority? Is an act of the Local Licensing Authority, a quasi-judicial body, administrative or legislative in nature?

of direct pedestrian access.[17] This measurement formula inappropriately differs from the statutory scheme.
44-10-302 references time place manner and number restrictions which may be adopted by the Town in relation to Retail Marijuana licensing.

License: A license or registration granted pursuant to this Article.

The Initiated Ordinance at Sec. 14-150 (1) related to the Local Licensing Authority recites that the Local Licensing Authority is authorized (according to the prior law at title 12) to issue Medical Marijuana Center Licenses. CRS 4-10-501 references the license to be issued as a Medical Marijuana Store Licenses rather than a Medical Marijuana Center License[18]. Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

The statute provides that the Town Board may be the local licensing authority but allows the board to designate a separate licensing authority. The Initiated Ordinance definition requires that the Town Board must serve as the licensing authority.

44-10-103(28) "Local licensing authority" means an authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, or the board of county commissioners of a county if no such authority is designated.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

The term Local Licensing official is defined in the proposed ordinance, but the term is not used otherwise in the proposed ordinance nor does it appear that the term is used in the Colorado Marijuana Code.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

44-10-103(48) defines a person as defied by 7-90-102 which adopts the definitions as "Person" means an individual, an estate, a trust, an entity, or a state or other jurisdiction.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

44-10-103(49) defines "Premises" means a distinctly identified, as required by the state licensing authority, and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

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[17] See also Sec 14-70-(c) The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.

[18] Medial Marijuana Center Licenses may be issued through 2020 by 44-11-401, the new Colorado Marijuana Code provides for Medical Marijuana Store Licenses, 44-10-401(2)(a). Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

> 44-10-103(67) defines "School" means a public or private preschool or a public or private elementary, middle, junior high, or high school or institution of higher education.[19]

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

> Defined according to wrong statutory citation. Should be defined by 44-10-103(69) with reference to "regulated marijuana in this State, pursuant to section 44-10-201."

14-40 **Applications-Licenses.**

A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.

> § 44-10-313 (12) provides each license issued under this article 10 is separate and distinct. It is unlawful for a person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.

B. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.

> The filing requirements seem to follow 44-10-301. The statute contains no 30-day response requirement. 44-10-302 references time place manner and number restrictions which may be adopted by the Town. Sec. 14-50, speaks to denial of licenses and it is not clear if the Town may adopt more restrictive time place manner and number restrictions beyond those set forth in the initiated ordinance

C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

> This is likely compliant with the statute, § 44-10-304(3) provides that within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision must be in writing and must state the reasons for the decision. The local

[19] Caveat, is a day care facility a pre-school?

licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

Sec. 14-60 Persons Prohibited as Licensees.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

After January 1, 2021, there is no longer a Colorado Retail Marijuana Code. By this section the Initiated Ordinance purports to act on behalf of the Local Licensing Authority.

A(1) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

Seems to comply with § 44-10-311 (2) § 44-10-313(1)(b) and (8)(b)

A(2) Retail or Medical Marijuana stores and establishes 2000 foot setback form schools, (500) feet of: parcels zoned P (Public District) or another Retail or Medical Marijuana store; and two-hundred (200) feet of: parcels zoned R-l (Residential District), R-2 (Residential District) or R-4 (Residential District)

Is this violative of single subject rules.

Zoning: § 44-10-311(d)(1) allows medical marijuana distancing at 1000' or greater if set by Town by ordinance or resolution.

The State Constitution at Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses.

Are these administrative actions that should be left to the Town, as provided for in the Colorado's Marijuana Code and are the provisions therefore improper to include in the Initiated Ordinance?

Sec. 14-80 Transfer of Ownership.

A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. § 12-43.4-309.

As of January 1, 2021, transfers of licenses will be addressed by 44-10-312.

B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed S1,000 to process such transfer.

44-10-803(3) provides: A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local jurisdiction on marijuana businesses and establishments located within the local jurisdiction. Is this an administrative act and improperly taken in the Initiated Ordinance?

Requiring that the Local Licensing Authority must allow any proposed transfer invades the Local Licensing Authority's responsibilities under state law. [20]

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-309 and this Article.

This statute is no longer in existence and as of January 1, 2021 is at Article 44, title 10.

Sec. **14-100 Licensing Renewal.**

A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day requirement set forth in this Article. <u>The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application</u>.

This section appears to be contrary to 44-10-314 and seems to invade the local licensing authority's ability to refuse a license if the licensing authority determines good cause exists. [21]

Sec. **14-110 Fees.**

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars ($1,500.00).

This section and 14-100 B and C limit the ability to charge fees, 44-10-803(3) provides A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local jurisdiction on marijuana businesses and establishments located within the local jurisdiction.

Sec. **14-120 Hours of Operation.**

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

[20] See 44-10-901 discussed below in relation to disciplinary action.
[21] See 44-10-901 discussed below in relation to disciplinary action.

Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses

Sec. **14-130 Disciplinary Actions: Suspension-Revocation-Fines.**

B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

44-10-901(1) grants the local licensing authority the authority to suspend or revoke a license issued by the authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this article 10, or any of the rules promulgated pursuant to this article 10, or of any of the terms, conditions, or provisions of the license issued by the state or local licensing authority. The subject provision dramatically limits this provision. As an example, if the licensing authority imposes conditions on a license issuance, does violation of the condition rise to an ongoing emergency? If the licensee violates operating hours, does an emergency arise? If it does not the licensing authority's ability to enforce is emaciated.

Sec. **14-130,** C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:

44-10-901(3) addresses fines in lieu of suspension and this section is largely in keeping with the statute, except C.1.c allows a fine in lieu so long as there has been no suspension or revocation in the last 12 months, 44-10-901(3)(a)(III) provides that a fine in lieu is appropriate if there has been no suspensions or revocation in the last 2 years. Affording the ability to grant fines in lieu for the shorter period is contrary to state law.

Sec. **14-130, C.2. provides**

The fine accepted shall be: (a) not less than five-hundred dollars (S500.00) nor more than two thousand five-hundred dollars (S2.500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (S 1,000.00) nor more than ten-thousand dollars ($10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.RS. §12-43.4-90l(4)(e).

The Initiated Ordinance should reference 44-10-901

Administrative vs Legislative nature of petitions and challenges to Initiated Ordinance.

Ordinance must comply with State Law. There are initial concerns with the Initiated Ordinances in that in cases, as outlined above, are not in line with the state statutes. As a statutory municipality, Wellington's laws may not deviate from the laws of the state. Voters, initiating an ordinance, have no greater power then the Town Board to adopt an ordinance that is contrary to state law. To the extent that the Initiated Ordinance is contrary to state law, the Ordinance is invalid.

Initiated Ordinance is not properly the subject of the right of initiative and referendum.

In Vagneur v. City of Aspen, 295 P.3d 493 (Colo. 2013) (2013) involved a protest filed under 31-11-110. The protesters in Vagneur filed written objections to the initiative petitions contending that the proposals **(1) contained administrative matters that are not subject to the initiative power; (2) included more than a single subject; and (3) contained misleading ballot titles.**

> The hearing officer concluded that the proposed ordinances "encroached upon the administrative processes reserved to the administrative staff of the City of Aspen as authorized by City Council," and that "allowing citizens through the initiative process, to either dictate or negate administrative actions normally undertaken by city staff is a misuse of the process" and contrary to the initiative rights established by the Aspen City Charter. The hearing officer declined to sever any impermissible portions of the initiative because Proponents had testified that they believed the conditions were necessary to understand their proposals

The Vagneur court reviewed whether a citizen initiative is administrative or legislative in character, and whether an administrative initiative is a proper exercise of the initiative power.[22] The court defined and set forth numerous tests from prior court decisions as to whether an ordinance was administrative or

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- [22] In City of Idaho Springs v. Blackwell, 731 P.2d 1250 (1987) the court stated: An ordinance which shows an intent to form a permanent rule of government until replaced is one of permanent operation." 5 E. McQuillin, Municipal Corporations § 16.55, at 194 (3d ed. 1981) (emphasis added) (footnote omitted). Second, acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. Witcher, 716 P.2d at 449-50; Margolis, 638 P.2d at 303; Zwerdlinger, 194 Colo. at 196, 571 P.2d at 1077.

  In the Blackwell case Idaho Springs asserted: (1) that the petitions, although styled as "petitions for initiated ordinances," were actually petitions for referenda that were untimely (2) that the petitions addressed administrative rather than legislative matters and were therefore improper;

- The court noted The proposed initiated ordinances also must be classified as administrative matters when viewed under the second "test." The choice of location and structure for the new city hall is an act "necessary to carry out" the existing legislative policy to build a new city hall. See Witcher, 716 P.2d at 449; Margolis, 638 P.2d at 303; Zwerdlinger, 194 Colo. at 196, 571 P.2d at 1077. The decision to raise tax revenues to be used in part for city hall construction was made in 1977 and approved by the majority of Idaho Springs voters in a special election. Implementation of the 1977 policy decision in the ordinance is administrative or executive and is not a proper subject for an initiated ordinance.

legislative in character. The court acknowledged that decisions surrounding the administrative/legislative determination needed to be made on a case by case basis. It can be argued that the question of whether the town should allow the sale of medical and retail marijuana is a legislative decision but the enforcement and implementation including time place manner and number restrictions are administrative in nature. Further, to the degree that the Initiated Ordinance has the Local Licensing Authority, which does not exist until the Ordinance is adopted, adopting positions, that action is likewise administrative. "When in a matter of state-wide concern, such as Marijuana Licensing, the state legislature has specifically delegated particular authority to the governing board, courts have uniformly held that the initiative processes do not ordinarily apply." McQuillan, Law of Municipal Corporation §16.52 (3rd Ed.).

Usurpation of Administrative and enforcement Power. The Initiated Ordinance improperly limits enforcement powers which by statute are afforded to the liquor licensing authority. Particularly Sec. **14-13 limits the** Local Licensing Authorities statutory ability to take disciplinary action, limiting the enforcement powers to situations where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency. Limitation of the authority's quasi-judicial powers afforded by state law is not an appropriate exercise of the initiative power.

Impossibility of Implementation. It can be argued that implementation of the Initiated Ordinance is virtually impossible as the ordinance is presented. As noted, the Initiated Ordinance cites to laws that no longer exist. As a general rule-initiated matters, once adopted may not be changed, the initiated Ordinance as proposed adopts state laws that are no longer in place and will become increasingly difficult to enforce and implement as time goes on.

Initiative vs. Referendum. Questions were raised whither the proponents may by initiative overturn the prior actions of the Town board in prohibiting the sales of medical and retail marijuana within the limits of the Town or if this action had to be filed as a referendum within the requisite time after the town board, as allowed by the state constitution, adopted ordinances precluding local marijuana sales.

Article XVIII Section 16, (5) (f) of the constitution allowed the Town by ordinance to prohibit retail marijuana stores. Having done so the ordinance had to be challenged by referendum to be changed?

Possible Alternative Ordinances. There is some authority that suggests that the proponents could withdraw the Initiated Ordinances.[23] I tentatively made a suggestion to the proponent's attorney that if the flawed Initiated Ordinances were withdrawn and single question ordinances along the form being submitted to the Board were alternate ordinances could be submitted. [24] Initially the attorney appeared to be interested in the proposal to withdraw, and advised he would get back to me. I followed up late

[23] The ability to withdraw the petitions at this point is subject to legal questions.

[24] **§ 31-11-104 (2)** Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Friday and was advised that he had not received a client response. We exchanged cell phone numbers, as of late Sunday I have not ben contacted. The Board could elect to present an alternative ordinance to be considered by the voters at the same election as the Initiated Ordinances are presented. The Board needs to evaluate whether this causes confusion.

INITIATIVE PETITION

Petition Section ___

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Do not sign this petition unless you have read or have had read to you the proposed initiative or referred measure or the summary in its entirety and understand its meaning.

SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

Full Text of Measure:

Be it enacted by the Town of Wellington, Colorado

Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado

WHEREAS, Article X, Section 20 of the Colorado Constitution, also referred to as the Taxpayer's Bill of Rights ("TABOR") requires voter approval for any new tax, any increase in any tax rate, the creation of any debt, extension of an expiring tax, and the spending of certain funds above limits established by TABOR; and

WHEREAS, November 3, 2020, is the coordinated general election for the State of Colorado and is one of the election dates at which ballot issues may be submitted to the eligible electors of the Town pursuant to TABOR; and

WHEREAS, if approved by a majority of the registered electors of the Town voting in the November 3, 2020 coordinated general election, Chapter 2 of the Wellington Municipal Code shall be amended to add a new Article 15, "Retail Marijuana Sales Tax," as provided herein.

NOW, THEREFORE, BE IT ORDAINED BY THE REGISTERED ELECTORS OF THE TOWN OF WELLINGTON, COLORADO THAT:

Section 1. A new Article 15 is hereby added to Chapter 2 of the Wellington Municipal Code entitled "Retail Marijuana Sales Tax," to read as follows:

Article 15 - RETAIL MARIJUANA SALES TAX

Sec. 15-10 Administration and Enforcement.

The Retail Marijuana Sales Tax imposed pursuant to this Article shall be administered and enforced in a manner consistent with the administration and enforcement of other Town sales taxes, including, without limitation, any penalties for failure to make any return or to collect or pay any tax.

Sec. 15-20 Definitions.

When used in this Article, the following words and phrases shall have the following meanings, unless from the context it clearly appears that a different meaning is indicated:

Consumer: A person twenty-one (21) years of age or older who purchases Retail Marijuana or Retail Marijuana Products for personal use by a person twenty-one (21) years of age or older.

Retail Marijuana: All parts of the plant of the genus cannabis whether growing or not, the seeds thereof , the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include industrial hemp, nor fiber produced from the stalks, oil or cake made from the seeds of the plant, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product. Retail Marijuana does not include Medical Marijuana as defined under the Colorado Medical Marijuana Code, C.R.S. §12-43.3-101, *et seq*.

Retail Marijuana Products: Concentrated Retail Marijuana Products that are comprised of Retail Marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Retail Marijuana Sales Tax: The tax imposed on the sale of Retail Marijuana and Retail Marijuana Products pursuant to this Chapter.

Retail Marijuana Store: An entity licensed by the Colorado Department of Revenue to sell Retail Marijuana and Retail Marijuana Products to Consumers pursuant to Section 16 of Article XVIII of the Colorado Constitution and the "Colorado Retail Marijuana Code," Article 43.4 of Title 12, C.R.S., and licensed by the Local Licensing Authority pursuant to the Code.

Sec. 15-30 Imposition of tax.

A. In addition to the sales tax imposed by Article 4, Chapter 4 of the Code, there is imposed upon all sales of Retail Marijuana and Retail Marijuana Products to a Consumer by a Retail Marijuana Store a tax at the rate of three and one-half percent (3.5%) of the amount of the sale.

B. The maximum tax rate that may be imposed pursuant to this Section is five percent (5%). At any time on or after January 1, 2022, the Town may, by ordinance:

   1. Establish another tax rate to be imposed pursuant to this Chapter that is equal to or less than the maximum five percent (5%) tax rate provided in this subsection; or

   2. After establishing a tax rate that is lower than five percent (5%), increase or decrease the tax rate to be imposed pursuant to this Chapter; except that in no event shall the Town increase the tax rate above five percent (5%) of the amount of the sale of Retail Marijuana or Retail Marijuana Products.

C. Nothing in this section shall be construed to impose a tax on the sale of marijuana products to any person by a Medical Marijuana Center licensed by the Colorado Department of Revenue to sell Medical Marijuana pursuant to the Colorado Medical Marijuana Code, Article 43.3 of Title 12, C.R.S., and licensed by the Town pursuant to this Chapter. To the extent any Retail Marijuana Establishment exists at the same location and under common ownership with a licensed Medical Marijuana Center, the retailer shall strictly segregate and account for sales of Retail Marijuana distinct from Medical Marijuana in accordance with all applicable state and city laws.

Sec. 15-40 Purpose of tax.

The Board of Trustees hereby declares that the purpose of the levy of the Retail Marijuana Sales Tax imposed by this Article is for raising funds for construction of a new community or recreation center, and/or other general operating expenses as may be designated instead by the Town on an annual basis.

Sec. 15-50 Revenue and spending limitations.

Notwithstanding any limitations on revenue , spending, or appropriations contained in Section 20 of Article X of the Colorado Constitution or any other provision of law, any revenues generated by the Retail Marijuana Sales Tax imposed pursuant to this Article, as approved by the voters at the general election on November 3, 2020, may be collected and spent as a voter-approved revenue change and shall not require further voter approval to modify the tax rate as provided in this Article.

Section 2. If any clause or provision of this ordinance is held to be invalid or unenforceable, the invalidity or unenforceability of the clause or provisions will not affect the validity of any of the remaining clauses or provisions of this ordinance.

Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate by name and mailing address two persons who shall represent the proponents in all matters affecting the petition and to whom all notices or information concerning the petition shall be mailed.

1. **Amie Rakoczy 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123**
2. **Tim Morgen 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123**

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SUMMARY: The initiative seeks to impose a retail marijuana sales tax in the Town of Wellington.

1. ____________ Printed last name ____________ Printed first name ____________ Date of Signing

____________ SIGNATURE ____________ Street Address *Wellington / Larimer* City / County

2. ____________ Printed last name ____________ Printed first name ____________ Date of Signing

____________ SIGNATURE ____________ Street Address *Wellington / Larimer* City / County

3. ____________ Printed last name ____________ Printed first name ____________ Date of Signing

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8. ______________ ______________ ______________
Printed last name | Printed first name | Date of Signing

______________ ______________ *Wellington / Larimer*
SIGNATURE | Street Address | City / County

9. ______________ ______________ ______________
Printed last name | Printed first name | Date of Signing

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SIGNATURE | Street Address | City / County

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SIGNATURE | Street Address | City / County

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SIGNATURE | Street Address | City / County

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Printed last name | Printed first name | Date of Signing

______________ ______________ *Wellington / Larimer*
SIGNATURE | Street Address | City / County

16. ______________ ______________ ______________
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SIGNATURE | Street Address | City / County

17. ______________ ______________ ______________
Printed last name | Printed first name | Date of Signing

______________ ______________ *Wellington / Larimer*
SIGNATURE | Street Address | City / County

18. ______________ ______________ ______________
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20. ______________ ______________ ______________
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______________ SIGNATURE | ______________ Street Address | *Wellington / Larimer* City / County

23. ______________ Printed last name | ______________ Printed first name | ______________ Date of Signing

______________ SIGNATURE | ______________ Street Address | *Wellington / Larimer* City / County

24. ______________ Printed last name | ______________ Printed first name | ______________ Date of Signing

______________ SIGNATURE | ______________ Street Address | *Wellington / Larimer* City / County

25. ______________ Printed last name | ______________ Printed first name | ______________ Date of Signing

______________ SIGNATURE | ______________ Street Address | *Wellington / Larimer* City / County

26. ______________ Printed last name | ______________ Printed first name | ______________ Date of Signing

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27. ______________ Printed last name | ______________ Printed first name | ______________ Date of Signing

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29. ______________ ______________ ______________
Printed last name | Printed first name | Date of Signing

______________ ______________ *Wellington / Larimer*
SIGNATURE | Street Address | City / County

30. ______________ ______________ ______________
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______________ ______________ *Wellington / Larimer*
SIGNATURE | Street Address | City / County

31. ______________ ______________ ______________
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______________ ______________ *Wellington / Larimer*
SIGNATURE | Street Address | City / County

32. ______________ ______________ ______________
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44. ______________ Printed last name ______________ Printed first name ______________ Date of Signing

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Pursuant to §31-11-106 (2) C.R.S., each petition section shall designate two persons who shall represent the proponents in all matters affecting the petition and to whom all notices concerning the petition shall be mailed.

1. Amie Rakoczy 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123
2. Tim Morgen 5856 S. Lowell Blvd., Unit 32, #242, Littleton, CO, 80123

AFFIDAVIT OF PETITION CIRCULATOR

I, ______________________________, hereby certify that:

1. I have read and understand the laws governing circulations of petitions in Colorado;

2. I was eighteen years of age or older at the time this section of the petition was circulated and signed by the listed electors;

3. I circulated this section of the petition;

4. Each signature thereon was affixed in my presence;

5. Each signature thereon is the signature of the person whose name it purports to be;

6. To the best of my knowledge and belief, each of the persons signing this petition section was, at the time of signing, a registered elector;

7. I have not paid or will not in the future pay and I believe that no other person has paid or will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the petition; and

8. I currently reside at the following address:

Street Address: ____

City, State, Zip Code: _________________________________

County: ____

FURTHER, Affiant sayeth not.

____

[printed name of circulator]

STATE OF COLORADO)
) ss.
COUNTY OF _____________)

The foregoing instrument was acknowledged before me this ___day of __________________, 2020, by ______________________________.

Witness my hand and official seal.

My commission expires:__________________

____

Notary Public

Memo

March & Olive, LLC

TO: Kelly Houghteling, Interim Town Administrator; Krystal Eucker, Wellington Town Clerk; Wellington Town Board

FROM: Brad March
March and Olive, LLC
1312 S. College Avenue, Fort Collins, CO
970-482-4322(p); 970-482-5719(f)

RE: Initiated election petitions

DATE: September 6, 2020

This memorandum is intended to summarize the status of the citizen proposed initiated marijuana ordinances (the Initiated Ordinances) and the election likely required as a result of the filing of the initiative petitions. Unfortunately, it was discovered late Friday (9/4) that one of the timeline dates as set out in CRS **§ 31-10-108[1],** related to scheduling a special election was not met.

The clerk has provided a list of dates which the statute keys to, dates include:
July 30, 2020 – Petition submission date
August 20, 2020 – Statement of sufficiency issued.
Nov 3, 2020 – General election date

Assuming that the Board does not adopt the citizen proposed ordinances, the statutory scheme requires that the ordinances be sent on to the voters. Based on cost considerations a recommendation was made to the board that the town schedule its own special election on the same day as the general election to allow the voters to determine whether the initiated ordinances would be adopted. The statute provides that a special election by mail in ballot may be held at the same time as the general election, but the election must be called at least 60 days before November 3rd[2]. That is, the election needed to be called before September 4th. The clerk prepared resolutions to call the special election to be presented to the Board on September 8th, the date however was unfortunately outside the sixty (60) day limit set by the statute. As the general election date cannot be met, the election date cannot be held until 32 days after the general election or, December 7, 2020. The TABOR election cannot be held until later in 2021 and is discussed further below.

Board action of proposed ordinances or forwarding to voters. CRS 31-11-104 provides that a proposed /initiated ordinance may be adopted by the town board as an ordinance of the town within 20 days of a finding of sufficiency by the clerk. This provision allows the board to adopt the Initiated Ordinance

[1] See clerk memo for text of statute.
[2] 31-10-108

without alteration on or before September 8th . If the board does not act and the Initiated Ordinance is not adopted, the ordinance must be submitted to the voters not less than 60 days and not more than 150 days after the clerk's statement of sufficiency is issued.[3] By y calculation this requires the election to be held no later than January 17, 2021.

Protest. By 21-11-110(1) Any registered elector who resides in the municipality may file, a protest in writing under oath with the clerk, challenge the sufficiency of the petition, setting forth specifically the grounds for such protest. The protest must be filed within 40 days after the initiative petition was originally filed with the clerk. The protest period will expire on September 8th.[4] The grounds for a protest may include, but are not limited to, failure of the petition or circulator to meet the requirements of the article. A resolution has been prepared and will be submitted to the board on September 8th for approval, designating the municipal judge, rather than the clerk as the hearing officer to hear any protest. If a protest is filed, the hearing officer's decision can be appealed to the Larimer County courts.

Sales tax and TABOR. Colorado law allows municipalities, in addition to charging the municipality's normally charged sales tax and taxes apportioned by the state [5] to charge a special retail marijuana sales tax.[6] The second proposed Initiated Ordinance provides that the Town would initially charge a 3.5% special sales tax, which could be increased by the Board to as much a 5% special sales tax. Under TABOR and the terms of the special sales tax statute tax increase measures must be approved by the voters and can only be submitted to the electorate at specified times. The TABOR amendment[7] at part 3(a) provides:

> *Ballot issues shall be decided in a state general election[8], biennial local district election, or on the first Tuesday in November of odd-numbered years. [D]istricts[9] may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.*

The special sales tax statutory provision likewise provides:

§ 29-2-115. Retail marijuana sales tax - county - municipality - election - legislative declaration - definition

(4) (a) Each municipality in the state is authorized to levy, collect, and enforce a municipal special sales tax upon all sales of retail marijuana and retail marijuana products…

(b) No special sales tax shall be levied pursuant to subsection (4)(a) of this section until the proposal has been referred to and approved by the eligible electors of the municipality in accordance with article 10 of title 31. Any proposal for the levy of a special sales tax in accordance with subsection (4)(a) of this section must be submitted to the eligible electors of the municipality on the date of the state general election, on the first Tuesday in November of an odd-numbered year, or on the date of a municipal biennial election. Any election on the proposal must be conducted by the clerk of the municipality in accordance with the "Colorado Municipal Election Code of 1965", article 10 of title 31.

Because of the 31-10-108 scheduling issue surrounding the special meeting it is not possible to present the special tax to the voters at the upcoming general election. The first opportunity to place the issue of the special tax before the voters would be November 2, 2021, the first Tuesday in November of the odd-numbered year.

Circulator petitions. A question was raised with me as to whether the petitioners complied with 31-11-113. I was not asked to review the full petition submissions and do not know whether the report required by 31-11-113 was turned into the clerk at the time the fully signed Initiated Ordinances were filed with the Clerk's office or, if filed, whether the report was sufficient under the statute. The statute provides that the proponents must file a report disclosing the amount paid per signature and the total amount paid to each circulator. The filing is to be made at the same time the signatures on the Initiated Ordinance(s) are filed. I have had concerns surrounding the enforceability of the 31-11-113 requiring the report but, the statutory requirements, although perhaps suspect, remain a part of the statutory scheme for filing citizen-initiated ordinances and should have been complied with.

---

[3] This is subject to the requirements of 31-10-108 that no special election may be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of the general election unless a mail ballot election is approved as a special election 60 days before the general election.

[4] 31-11-110

[5] Title 39, Article 28, Part 2

[6] 29-2-15.

[7] Constitution Article X sec 20

" § 1-1-104 (17) General election" means the election held on the Tuesday succeeding the first Monday f November in each even-numbered year.

31-10-101(10) Municipal election - Regular election" means: (a) Before July 1, 2004, the election held in towns on the first Tuesday of April in each even-numbered year; the election held in cities on the first Tuesday of November in each odd-numbered year; and the election held in any other municipality at which the regular election of officers takes place; (b) On and after July 1, 2004, the election held in any municipality in accordance with paragraph (a) of this subsection (10) unless a majority of the registered electors of the municipality voting on the question have voted to hold the regular election on a date different than specified in paragraph (a) of this subsection (10) pursuant to section 31-10-109(1), in which case "regular election" means, for any particular municipality, the date on which the regular election of officers takes place as determined by the registered electors of the municipality.

[9] For purposes of TABOR the Town is a district.

The validity of placing restrictions on circulators has been the subject of challenges before various courts, most notably the United States Supreme Court in Buckley v. American Constitutional Law Foundation, 119 S.Ct. 636, 525 U.S. 182, 142 L.Ed.2d 599, 67 U.S.L.W. 4043 (1999). The Buckley case involved the state's initiative process[10] and dealt with required disclosure of paid circulator identities and other paid circulator information. The legislature did not change/modify the requirements of 31-11-113 after Buckley. [11])

The statute that requires the report that is to be filed with the clerk was adopted in 1995, before the Buckley decision. The statute only requires disclosure of the amount paid per signature and the amount paid to circulate and does not require that the amount paid to each circulator be disclosed. The report requirement may be enforceable after Buckley[12] [13]

Petition deficiencies. I have reviewed the form of the petitions with an agent of the Colorado Department of Revenue Marijuana Enforcement Division who characterized the form of the petitions, specifically the petition allowing for marijuana sales, as "a mess." The most noted concern is that the Initiated Ordinance's proposed Article 14 references the Colorado's Medical Marijuana Code as being codified at Title 12 Article 43.3 and Retail Marijuana Code as being codified at Title 12 Article 43.4. At section 14-10 the Initiated Ordinance recites that Retail Marijuana and Medical Marijuana may only be sold as allowed by the "Colorado Retail Marijuana Code" and the Colorado Medial Marijuana Code. The Colorado Retail Marijuana and the Colorado Medial Marijuana Code are currently embodied in state statutes at Title 44 article 11 (as opposed to Title 12 Article 43.3) as the Colorado Medical Marijuana

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[10] State initiative process at 1-40-101 et seq, municipal initiative proves at 31-11-101 et seq.

[11] The majority opinion of the court stated - we agree with the Court of Appeals appraisal: Listing paid circulators and their income from circulation "forc[es] paid circulators to surrender the anonymity enjoyed by their volunteer counterparts," 120 F. 3d, at 1105;[24] no more than tenuously related to the substantial interests disclosure serves, Colorado's reporting requirements, to the extent that they target paid circulators, "fai[l] exacting scrutiny."

- [12] For other cases involving similar initiated petition circulator issues see Independence Inst. v. Gessler, 936 F. Supp. 2d 1256 (D. Colo. 2013), signature compensation for petition circulators violates the first amendment of the United States constitution; Am. Constitutional Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), aff'd, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999); requirement that circulators be registered voters is not narrowly tailored to a compelling state interest, it unconstitutionally impinges on free expression; Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999) Badge requirement is unenforceable. Meyer v. Grant, 108 S.Ct. 1886, 486 U.S. 414, 100 L.Ed.2d 425, 56 U.S.L.W. 4516 (1988), state may not prohibit paid circulators.

[13] Justice Thomas in his concurrence to the Buckley decision notes: "Even assuming that Colorado has a compelling interest in identifying circulators, its law does not serve that interest. The State requires that proponents identify only the names of *paid* circulators, not *all* circulators. The interest in requiring a report as to the money paid to each circulator by name, as the majority points out, *ante,* at 201, has not been demonstrated.

Code and Title 44, Article 12 (as opposed to Title 12 Article 43.4) as the Colorado Retail Marijuana Code. The Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code are to be replaced effective January 1, 2021 (the date the proposed ordinance goes into effect) and the governing statutes will be located at title 44, Article 10, and the designation as the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code will be eliminated and the code will be titled as the "Colorado Marijuana Code"[14].[15] Throughout the Initiated Ordinance's proposed new Article 14 to the Town Code the incorrect citations are referenced. For example, the proposed Sec 14-20, C and D provide that the Local Licensing Authority adopts the minimum licensing requirements of Title 12, Article 43.4 and 43.3. No such minimum standards exist that correspond to these citations. Further, the initiated ordinance, including at Sec 14-20 provides for a Local Licensing Authority and recites actions that are being taken by the local Licensing Authority when no Local Licensing Authority has been created by the Town[16]. The following references are to concerning provisions of the Initiated Ordinance proposed code (identified as SEC 14-**) and corresponding concerns with the concerns indented below each quoted Initiated Ordinance section.

Proposed Sec 14-30 defines:

Colorado Medical Marijuana Code: Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto.

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Colorado Retail Marijuana Code or CRMC: Article 43.4 of Title 12 of the Colorado Revised Statutes, as amended, and any regulations promulgated thereto

This code will no longer exist after 2020 and has not existed since at least 2018 at the citation reference

Direct Measurement: A straight line from the nearest property line of the school or campus to the nearest portion of the building used for marijuana sales.

CRS 44-10-311(d)(II) The distances referred to in this subsection (1)(d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route

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[14] Marijuana Code was re-codified in 2018 by HB1023 and is now found at Title 44, articles 11 and 22 of the Colorado statutes and in 2019 by SB 19-224 and as of January 1, 2021 will be effective at Title 44 Article 10.

[15] See also references to Colorado Medical Marijuana Code and Colorado Retail Marijuana code with statutory cites as Sec 1-30 definitions.

[16] By the Initiated Ordinance the Licensing Authority is created by Sec 14-150 Can the voters create the Local Licensing Authority and in the same initiated action act for the Licensing authority? Is an act of the Local Licensing Authority, a quasi-judicial body, administrative or legislative in nature?

of direct pedestrian access.[17] This measurement formula inappropriately differs from the statutory scheme.
44-10-302 references time place manner and number restrictions which may be adopted by the Town in relation to Retail Marijuana licensing.

License: A license or registration granted pursuant to this Article.

The Initiated Ordinance at Sec. 14-150 (1) related to the Local Licensing Authority recites that the Local Licensing Authority is authorized (according to the prior law at title 12) to issue Medical Marijuana Center Licenses. CRS 4-10-501 references the license to be issued as a Medical Marijuana Store Licenses rather than a Medical Marijuana Center License[18]. Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

Local Licensing Authority: The Board of Trustees of the Town of Wellington.

The statute provides that the Town Board may be the local licensing authority but allows the board to designate a separate licensing authority. The Initiated Ordinance definition requires that the Town Board must serve as the licensing authority.

44-10-103(28) "Local licensing authority" means an authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, or the board of county commissioners of a county if no such authority is designated.

Local Licensing Official: The Town Clerk or other designee of the Local Licensing Authority.

The term Local Licensing official is defined in the proposed ordinance, but the term is not used otherwise in the proposed ordinance nor does it appear that the term is used in the Colorado Marijuana Code.

Person: A natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

44-10-103(48) defines a person as defied by 7-90-102 which adopts the definitions as "Person" means an individual, an estate, a trust, an entity, or a state or other jurisdiction.

Premises: A distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

44-10-103(49) defines "Premises" means a distinctly identified, as required by the state licensing authority, and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

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[17] See also Sec 14-70-(c) The distances referred to in this Article are to be computed by direct measurement from the nearest property line of the applicable setback parcel to the nearest portion of the Retail or Medical Marijuana Store.
[18] Medial Marijuana Center Licenses may be issued through 2020 by 44-11-401, the new Colorado Marijuana Code provides for Medical Marijuana Store Licenses, 44-10-401(2)(a). Medical Marijuana Center Licenses will no longer exist after January 1, 2021.

School: A public or private preschool or a public or private elementary, middle, junior high, or high school, college or principal campus of a college (and including the new Middle / High School at Wellington not open as of the adoption of this ordinance).

> 44-10-103(67) defines "School" means a public or private preschool or a public or private elementary, middle, junior high, or high school or institution of higher education.[19]

State Licensing Authority: The Authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of Medical and Retail Marijuana in this State, pursuant to Articles 43.3 and 43.4 of Title 12 C.R.S.

> Defined according to wrong statutory citation. Should be defined by 44-10-103(69) with reference to "regulated marijuana in this State, pursuant to section 44-10-201."

14-40 **Applications-Licenses.**

A. Dual Operation. An applicant for a Retail Marijuana Store License under this Article may co-locate a Medical Marijuana Store and a Retail Marijuana Store at the same location as permitted by the Colorado Retail Marijuana Code.

> § 44-10-313 (12) provides each license issued under this article 10 is separate and distinct. It is unlawful for a person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.

B. An application for a License shall be filed with the Local Licensing Authority on forms provided by the State and Local Licensing Authority. The application shall contain such information as the State and Local Licensing Authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the State and Local Licensing Authority. Upon receipt of notice from the State Licensing Authority of the application for a license under the Colorado Retail Marijuana Code (or the Colorado Medical Marijuana Code), the Local Licensing Authority shall determine whether the applicant qualifies for licensure under this Article. The Local Licensing Authority shall notify the state and the Applicant in writing of its determination as to whether the applicant qualifies for licensure as a Retail or Medical Marijuana Store no later than thirty (30) days from the date the application was originally received by the Local Licensing Authority.

> The filing requirements seem to follow 44-10-301. The statute contains no 30-day response requirement. 44-10-302 references time place manner and number restrictions which may be adopted by the Town. Sec. 14-50, speaks to denial of licenses and it is not clear if the Town may adopt more restrictive time place manner and number restrictions beyond those set forth in the initiated ordinance

C. If an application is denied, the Licensing Authority shall set forth in writing the grounds for denial.

> This is likely compliant with the statute, § 44-10-304(3) provides that within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision must be in writing and must state the reasons for the decision. The local

[19] Caveat, is a day care facility a pre-school?

licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

Sec. 14-60 Persons Prohibited as Licensees.

Sec. 14-70 Restrictions for Applications for Marijuana Store Licenses.

The Local Licensing Authority hereby adopts the provisions and restrictions set forth in the Colorado Retail Marijuana Code.

After January 1, 2021, there is no longer a Colorado Retail Marijuana Code. By this section the Initiated Ordinance purports to act on behalf of the Local Licensing Authority.

A(1) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

Seems to comply with § 44-10-311 (2) § 44-10-313(1)(b) and (8)(b)

A(2) Retail or Medical Marijuana stores and establishes 2000 foot setback form schools, (500) feet of: parcels zoned P (Public District) or another Retail or Medical Marijuana store; and two-hundred (200) feet of: parcels zoned R-l (Residential District), R-2 (Residential District) or R-4 (Residential District)

Is this violative of single subject rules.

Zoning: § 44-10-311(d)(1) allows medical marijuana distancing at 1000' or greater if set by Town by ordinance or resolution.

The State Constitution at Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses.

Are these administrative actions that should be left to the Town, as provided for in the Colorado's Marijuana Code and are the provisions therefore improper to include in the Initiated Ordinance?

Sec. 14-80 Transfer of Ownership.

A. A State or Local License granted under the provisions of this Article shall not be transferable except as provided below, but this Section shall not prevent a change of location as provided in C.R.S. § 12-43.4-309.

As of January 1, 2021, transfers of licenses will be addressed by 44-10-312.

B. For a transfer of ownership, a License Holder shall apply to the State and Local Licensing Authorities on forms prepared and furnished by the State Licensing Authority. The Local Licensing Authority must allow any proposed transfer approved by the State Licensing Authority, but may charge a fee not to exceed S1,000 to process such transfer.

44-10-803(3) provides: A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local jurisdiction on marijuana businesses and establishments located within the local jurisdiction. Is this an administrative act and improperly taken in the Initiated Ordinance?

Requiring that the Local Licensing Authority must allow any proposed transfer invades the Local Licensing Authority's responsibilities under state law. [20]

Sec. 14-90 Review and Approval of License.

The Local Licensing Authority adopts the provisions and restrictions set forth in C.R.S. §12- 43.4-309 and this Article.

This statute is no longer in existence and as of January 1, 2021 is at Article 44, title 10.

Sec. **14-100 Licensing Renewal.**

A. A Licensee shall apply for the renewal of an existing License to the Local Licensing Authority not less than thirty (30) days prior to the date of expiration. A Local Licensing Authority shall not accept an application for renewal of a License after the date of expiration, except as provided in subsection (B) of this Section. The State Licensing Authority may extend the expiration date of the License and accept a late application for renewal of a License provided that the applicant has filed a timely renewal application with the Local Licensing Authority. All renewals filed with the State Licensing Authority and subsequently approved by the State Licensing Authority shall next be processed by the Local Licensing Authority. The Local Licensing Authority, in its discretion, subject to the requirements of this Article and based upon reasonable grounds, may waive the thirty (30) day requirement set forth in this Article. <u>The Local Licensing Authority may hold a hearing on and/or denial of the application for renewal only if the State Licensing Authority rejects the renewal application</u>.

This section appears to be contrary to 44-10-314 and seems to invade the local licensing authority's ability to refuse a license if the licensing authority determines good cause exists. [21]

Sec. **14-110 Fees.**

Every Retail and Medical Marijuana Store shall pay an operating fee at the time of its initial application for licensure and a renewal fee at the time of each application for License renewal. This fee is imposed to offset the cost of administering this License. The initial application fee and renewal fee shall be determined by the Board of Trustees and set by Resolution, but in no event shall either fee exceed one thousand five-hundred dollars ($1,500.00).

This section and 14-100 B and C limit the ability to charge fees, 44-10-803(3) provides A local jurisdiction in which a license under this article 10 may be permitted may adopt and impose operating fees in an amount determined by the local jurisdiction on marijuana businesses and establishments located within the local jurisdiction.

Sec. **14-120 Hours of Operation.**

A Retail or Medical Marijuana Store may engage in the sale of marijuana or marijuana products between the hours of 8:00 a.m. and 9:00 p.m. daily; provided, however, that the Board of Trustees may at its discretion extend, but not further limit, such hours of operation.

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[20] See 44-10-901 discussed below in relation to disciplinary action.

[21] See 44-10-901 discussed below in relation to disciplinary action.

Article XVIII Section 16, (5) (f) allows a municipality to enact ordinances or regulations not in conflict governing time place manner, number of establishment operations and establishing procedures for issuance suspension and revocation of licenses

Sec. **14-130 Disciplinary Actions: Suspension-Revocation-Fines.**

B. The grounds for the Local Licensing Authority to take disciplinary action are limited to a situation where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency regarding, the public health, welfare or the safety of the immediate neighborhood in which the establishment is located. Evidence to support such a finding must at least include: (i) a continuing pattern of convictions for offenses against the public peace, or (ii) a continuing pattern of convictions for criminal conduct under state or local law directly related to or arising from the Licensed Premises.

44-10-901(1) grants the local licensing authority the authority to suspend or revoke a license issued by the authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this article 10, or any of the rules promulgated pursuant to this article 10, or of any of the terms, conditions, or provisions of the license issued by the state or local licensing authority. The subject provision dramatically limits this provision. As an example, if the licensing authority imposes conditions on a license issuance, does violation of the condition rise to an ongoing emergency? If the licensee violates operating hours, does an emergency arise? If it does not the licensing authority's ability to enforce is emaciated.

Sec. **14-130,** C. 1. The Local Licensing Authority may, in its sole discretion, issue a fine in lieu of a suspension. When determining whether to impose a fine in lieu of a suspension, the Local Licensing Authority may make findings that:

44-10-901(3) addresses fines in lieu of suspension and this section is largely in keeping with the statute, except C.1.c allows a fine in lieu so long as there has been no suspension or revocation in the last 12 months, 44-10-901(3)(a)(III) provides that a fine in lieu is appropriate if there has been no suspensions or revocation in the last 2 years. Affording the ability to grant fines in lieu for the shorter period is contrary to state law.

Sec. **14-130, C.2. provides**

The fine accepted shall be: (a) not less than five-hundred dollars (S500.00) nor more than two thousand five-hundred dollars (S2.500.00) for license infractions of a minor nature that do not directly impact the public health, safety, or welfare which shall include but are not limited to failure to display badges, unauthorized minor modifications of premises of a minor nature, minor clerical errors in inventory tracking procedures; and (b) not less than one-thousand dollars (S 1,000.00) nor more than ten-thousand dollars ($10,000.00) for violations that have an immediate impact on the public health, safety, or welfare, including, but not limited to, a violation of C.RS. §12-43.4-90l(4)(e).

The Initiated Ordinance should reference 44-10-901

Administrative vs Legislative nature of petitions and challenges to Initiated Ordinance.

Ordinance must comply with State Law. There are initial concerns with the Initiated Ordinances in that in cases, as outlined above, are not in line with the state statutes. As a statutory municipality, Wellington's laws may not deviate from the laws of the state. Voters, initiating an ordinance, have no greater power then the Town Board to adopt an ordinance that is contrary to state law. To the extent that the Initiated Ordinance is contrary to state law, the Ordinance is invalid.

Initiated Ordinance is not properly the subject of the right of initiative and referendum.

In Vagneur v. City of Aspen, 295 P.3d 493 (Colo. 2013) (2013) involved a protest filed under 31-11-110. The protesters in Vagneur filed written objections to the initiative petitions contending that the proposals **(1) contained administrative matters that are not subject to the initiative power; (2) included more than a single subject; and (3) contained misleading ballot titles.**

> The hearing officer concluded that the proposed ordinances "encroached upon the administrative processes reserved to the administrative staff of the City of Aspen as authorized by City Council," and that "allowing citizens through the initiative process, to either dictate or negate administrative actions normally undertaken by city staff is a misuse of the process" and contrary to the initiative rights established by the Aspen City Charter. The hearing officer declined to sever any impermissible portions of the initiative because Proponents had testified that they believed the conditions were necessary to understand their proposals

The Vagneur court reviewed whether a citizen initiative is administrative or legislative in character, and whether an administrative initiative is a proper exercise of the initiative power.[22] The court defined and set forth numerous tests from prior court decisions as to whether an ordinance was administrative or

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- [22] In City of Idaho Springs v. Blackwell, 731 P.2d 1250 (1987) the court stated: An ordinance which shows an intent to form a permanent rule of government until replaced is one of permanent operation." 5 E. McQuillin, Municipal Corporations § 16.55, at 194 (3d ed. 1981) (emphasis added) (footnote omitted). Second, acts that are necessary to carry out existing legislative policies and purposes or which are properly characterized as executive are deemed to be administrative, while acts constituting a declaration of public policy are deemed to be legislative. Witcher, 716 P.2d at 449-50; Margolis, 638 P.2d at 303; Zwerdlinger, 194 Colo. at 196, 571 P.2d at 1077.

In the Blackwell case Idaho Springs asserted: (1) that the petitions, although styled as "petitions for initiated ordinances," were actually petitions for referenda that were untimely (2) that the petitions addressed administrative rather than legislative matters and were therefore improper;

- The court noted The proposed initiated ordinances also must be classified as administrative matters when viewed under the second "test." The choice of location and structure for the new city hall is an act "necessary to carry out" the existing legislative policy to build a new city hall. See Witcher, 716 P.2d at 449; Margolis, 638 P.2d at 303; Zwerdlinger, 194 Colo. at 196, 571 P.2d at 1077. The decision to raise tax revenues to be used in part for city hall construction was made in 1977 and approved by the majority of Idaho Springs voters in a special election. Implementation of the 1977 policy decision in the ordinance is administrative or executive and is not a proper subject for an initiated ordinance.

legislative in character. The court acknowledged that decisions surrounding the administrative/legislative determination needed to be made on a case by case basis. It can be argued that the question of whether the town should allow the sale of medical and retail marijuana is a legislative decision but the enforcement and implementation including time place manner and number restrictions are administrative in nature. Further, to the degree that the Initiated Ordinance has the Local Licensing Authority, which does not exist until the Ordinance is adopted, adopting positions, that action is likewise administrative. "When in a matter of state-wide concern, such as Marijuana Licensing, the state legislature has specifically delegated particular authority to the governing board, courts have uniformly held that the initiative processes do not ordinarily apply." McQuillan, Law of Municipal Corporation §16.52 (3rd Ed.).

Usurpation of Administrative and enforcement Power. The Initiated Ordinance improperly limits enforcement powers which by statute are afforded to the liquor licensing authority. Particularly Sec. **14-13 limits the** Local Licensing Authorities statutory ability to take disciplinary action, limiting the enforcement powers to situations where the Licensed Premises have been consistently operated in a manner that adversely affects, and creates an ongoing emergency. Limitation of the authority's quasi-judicial powers afforded by state law is not an appropriate exercise of the initiative power.

Impossibility of Implementation. It can be argued that implementation of the Initiated Ordinance is virtually impossible as the ordinance is presented. As noted, the Initiated Ordinance cites to laws that no longer exist. As a general rule-initiated matters, once adopted may not be changed, the initiated Ordinance as proposed adopts state laws that are no longer in place and will become increasingly difficult to enforce and implement as time goes on.

Initiative vs. Referendum. Questions were raised whither the proponents may by initiative overturn the prior actions of the Town board in prohibiting the sales of medical and retail marijuana within the limits of the Town or if this action had to be filed as a referendum within the requisite time after the town board, as allowed by the state constitution, adopted ordinances precluding local marijuana sales.

Article XVIII Section 16, (5) (f) of the constitution allowed the Town by ordinance to prohibit retail marijuana stores. Having done so the ordinance had to be challenged by referendum to be changed?

Possible Alternative Ordinances. There is some authority that suggests that the proponents could withdraw the Initiated Ordinances.[23] I tentatively made a suggestion to the proponent's attorney that if the flawed Initiated Ordinances were withdrawn and single question ordinances along the form being submitted to the Board were alternate ordinances could be submitted. [24] Initially the attorney appeared to be interested in the proposal to withdraw, and advised he would get back to me. I followed up late

[23] The ability to withdraw the petitions at this point is subject to legal questions.

[24] § 31-11-104 (2) Alternative ordinances may be submitted at the same election, and, if two or more conflicting measures are approved by the people, the one that receives the greatest number of affirmative votes shall be adopted in all particulars as to which there is a conflict.

Friday and was advised that he had not received a client response. We exchanged cell phone numbers, as of late Sunday I have not ben contacted. The Board could elect to present an alternative ordinance to be considered by the voters at the same election as the Initiated Ordinances are presented. The Board needs to evaluate whether this causes confusion.

TOWN OF WELLINGTON

Board of Trustees Meeting

Date: September 22, 2020
Submitted By:
Subject: Resolution No. 30-2020 - A Resolution Calling a Special Election in the Town of Wellington, Colorado

- **Staff presentation: Brad March, Town Attorney**

EXECUTIVE SUMMARY

The Town Clerk's Office received signed petition forms for the sale of retail and medical marijuana in the Town of Wellington and to impose a 3.5% tax on retail marijuana and retail marijuana products in the Town of Wellington on July 30, 2020. The Clerk then inspected the signatures on the petitions for validity. A statement of sufficiency was completed within the 30 days allowed. A statement of sufficiency was sent to the individuals listed on the petitions as the proponents of the petitions electronically on August 20, 2020 and on August 25, 2020 as hard copies

The proposed ordinances may be adopted without alteration by the legislative body within 20 days (by 09/09/2020) following the final determination of petition sufficiency. If the proposed ordinances are not adopted by the legislative body, the proposed ordinances shall forthwith be published as other ordinances as published and shall refer the proposed ordinances, in the form petitioned for, to the registered electors of the municipality at a regular or special election.

Pursuant to C.R.S 31-10-108, Special elections shall be held on any Tuesday designated by ordinance or resolution of the governing body. No special election shall be held within the ninety days preceding a regular election. No special election shall be called within sixty days before the date thereof, nor shall any special election be held within the thirty-two days before or after the date of a primary, general, or congressional vacancy election. A special election may be held at the same time and place as a primary, congressional vacancy, or general election as a coordinated election pursuant to section 1-7-116, C.R.S., or may be conducted at the same time as a mail ballot election pursuant to article 7.5 of title 1, C.R.S. Special elections shall be conducted as nearly as practicable in the same manner as regular elections.

The special election can be called on any Tuesday between December 7, 2020 - January 17, 2021.

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

Staff recommends approval of Resolution 30-2020 with a date certain for the Special Election.

ATTACHMENTS

1. Special Election Resolution

TOWN OF WELLINGTON

RESOLUTION 30-2020

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO CALLING A SPECIAL ELECTION

WHEREAS, C.R.S. §§ 31-10-108 requires that any special election be called by resolution or ordinance of the governing body; and

WHEREAS, the Board of Trustees desires to conduct a special election, by mail ballot on ______________________________ to present to the registered electors one or more ballot questions or issues.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, THAT:

1. Pursuant to C.R.S. §§ 31-10108, the Board of Trustees calls a special election to be held on _________________________. The purpose of such special election shall be to submit to the registered electors of Wellington:

    a) Shall the Town of Wellington allow retail and medical marijuana sales in the C-3 zone district.

2. As authorized by the Municipal Election Code, the special election shall be conducted as a mail ballot election in accordance Article 10, Title 31, C.R.S.

3. The Town Clerk is hereby appointed as the Election Official of the Town for the special election. The Town Clerk shall have full authority and is hereby directed to perform and discharge all functions and duties imposed upon the Town by law.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 8th day of September, 2020

TOWN OF WELLINGTON, COLORADO

____

Troy Hamman, Mayor

ATTEST:

____

Krystal Eucker, Town Clerk

TOWN OF WELLINGTON

RESOLUTION NO. 31-2020

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO AUTHORIZING THE TOWN CLERK TO APPOINT ELECTION JUDGES FOR THE SPECIAL ELECTION

WHEREAS, C.R.S. §§ 31-10-401 provides the municipal election judges must be appointed at least fifteen (15) days prior to the day of the election; and

WHEREAS, the Town of Wellington has a special election scheduled for ___________________________; and

WHEREAS, C.R.S. §§ 31-10-401 further provides that the governing body may, by resolution, delegate the town clerk the authority and responsibility to appoint the judges of the election.

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

> That the Town Clerk is hereby authorized to appoint the judges of election for the special election to be held on Tuesday, ______________________________________.

Upon a motion duly made, seconded and carried, the foregoing Resolution was adopted by the Board of Trustees this 8th day of September, 2020

TOWN OF WELLINGTON, COLORADO

____
Troy Hamman, Mayor

ATTEST:

____
Krystal Eucker, Town Clerk

Board of Trustees COMMUNICATION

Meeting Date: Sept 22, 2020	Page 1 of 1	Item:
Agenda No.:	Presented by: Town Attorney	**Special meeting and referral of initiated marijuana ordinances**

At the board's September 8, 2020 meeting the board tabled agenda items 3 through 6:

3. Proposed Ordinance - An Ordinance Concerning the Regulation of Retail and Medical Marijuana. Stores in the Town of Wellington.
4. Proposed Ordinance - An Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado.
5. Resolution No. 30-2020 - A Resolution Calling a Special Election in the Town of Wellington, Colorado
6. Resolution No. 31-2020 - A Resolution Authorizing the Town Clerk to Appoint Election Judges for the Special Election

As set forth in the accompanying resolution C.R.S. § 31-11-104(1) provides in applicable part:

> *… The proposed ordinance may be adopted without alteration by the legislative body within twenty days following the final determination of petition sufficiency. If … the proposed ordinance is not adopted by the legislative body, the legislative body shall **forthwith** publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure.* ***; and,***

This statute requires the board **forthwith** to publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance. Forthwith is not defined by the statute. As the board is aware protests related to the sufficiency of the proposed initiated ordinances were filed and those protests were heard by the municipal judge as the hearing officer on Wednesday September 16th The judges decision is due by Monday September 21st and should be available by the time of the board meeting. Staff will be able to advise the board relative to the hearing officer's decision at the upcoming meeting. As noted in the accompanying proposed resolution, the hearing officer's determination can be appealed to the court.

The resolution is intended to address the tabled matters. This said, the election can not be held until December and there is no urgency to setting the election date. If the hearing officer (r a court) determines that the proposed ordinances are fatally defective, the election would not be necessary. Cancelling the special elections would be problematic.

It would be staff's recommendation that the proposed resolution as well as agenda item 6 related to election judges be further tabled until the 13th meeting to afford a better picture of the status of this matter.

RESOLUTION OF BOARD SENDING INITIATED ORDINANCE REGARDING SALE OF MARIJUANA TO THE VOTERS

RESOLUTION 36-2020

TOWN OF WELLINGTON, COLORADO

A RESOLUTION OF THE TOWN BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, REFERRING A BALLOT QUESTION REGARDING THE REGULATION OF RETAIL AND MEDICAL MARIJUANA STORES TO THE ELECTORS OF THE TOWN AND SETTING A SPECIAL ELECTION FOR SUCH MATTER FOR JANUARY 12, 2021, and REFERRING A BALLOT QUESTION REGARDING THE A RETAIL MARIJUANA SALES TAX TO THE ELECTORS OF THE TOWN AND SETTING A SPECIAL ELECTION FOR SUCH MATTER FOR NOVEMBER 1, 2021.

WHEREAS, two initiated ordinance petitions, one, an Ordinance Concerning the Regulation of Retail and Medical Marijuana Stores in the Town of Wellington (the "Marijuana Initiated Ordinance") and one, an Ordinance Concerning Retail Marijuana Sales Tax in the Town of Wellington, Colorado (the "Tax Initiated Ordinance") (together the Marijuana Initiated Ordinance and the Tax Initiated Ordinance re referred to as the "Initiated Ordinances"), were filed with the Wellington Town Clerk, and.

WHEREAS, pursuant to **C.R.S. § 31-11-109** the Wellington Town Clerk (the "Clerk") inspected the filed Initiated Ordinances and issued a statement (the "Statement of Sufficiency") on August 20, 2021, that a sufficient number of valid signatures had been submitted; and,

WHEREAS, C.R.S. § 31-11-104(1) provides in applicable part:

> *… The proposed ordinance may be adopted without alteration by the legislative body within twenty days following the final determination of petition sufficiency. If … the proposed ordinance is not adopted by the legislative body, the legislative body shall **forthwith** publish the proposed ordinance as other ordinances are published and shall refer the proposed ordinance, in the form petitioned for, to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the measure**; and,***

WHEREAS, the Clerk placed on the Agenda of the Wellington Town Board of Trustees (the "Town Board") at the September 8, 2020, meeting for consideration, the Initiated Ordinances, such date having been within twenty days following the Clerks issuance of the Statement of Sufficiency; and,

WHEREAS, the Town Board at the September 8, 2020, meeting did not adopt either of the Initiated Ordinances; and

WHEREAS, the Town Board, having not adopted the Initiated Ordinances is required to **forthwith** publish the Initiated Ordinances to the registered electors of the Town at a regular or special election held not less than sixty days and not more than one hundred fifty days after Statement of Sufficiency, unless otherwise required by the state constitution; and,

WHEREAS, the Clerk has been advised by the Elections Division Clerk of Larimer County, Colorado, that timing does not allow the Town Board to place the Initiated Ordinances on the General Election Ballot for the November 3, 2020, election; and,

WHEREAS, C.R.S. § 31-10-108 provides, in applicable part,

*Special elections shall be held on any Tuesday designated by ordinance or resolution of the governing body. ... No special election shall be called within sixty days before the date [the date of the general Election} thereof, nor shall any special election be held within the thirty-two days before or after the date of a primary, general, or congressional vacancy election. …*and

WHEREAS, pursuant to C.R.S. § 31-10-108 the time 60 days from the date of the General Election has passed and a special election therefore may not be scheduled until, at the earliest December 8, 2020 (32 days after November 3, 2020); and,

WHEREAS, pursuant to C.R.S. § 31-11-104(1), a special election must he held no later than January 12, 2021 (the Tuesday before one hundred fifty days after the issuance of the Clerk's issuance of the Statement of Sufficiency); and,

WHEREAS, registered electors are afforded an opportunity for protest by C.R.S. § 31-11-110 which provides to in applicable part:

(1) Within forty days after an initiative or referendum petition is filed, a protest …may be filed …., and

(3) . No later than five days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient and the reasons therefor…. The determination as to petition sufficiency may be reviewed by the district court for the county in which such municipality or portion thereof is located upon application of the protester, the persons designated as representing the petition proponents …, or the municipality, but such review shall be had and determined forthwith. and,

WHEREAS, C.R.S. § 31-11-110 protests were filed and were heard by the hearing officer on September 16, 2020, a decision relative to the protests has been rendered by the hearing officer. By Colorado Rule of Civil Procedure 106(4) and 106 (5)(b) the hearing officer's determination is subject to review by the district court by filing with the district court within 28 days of the date of receipt of the hearing officer's decision; and,

WHEREAS, either of the protesters, the persons designated as representing the petition proponents, or the municipality are still able to request review of the hearing officer's decision; and

WHEREAS, Article X, Section 20 (TABOR) at subpart (3)(a) provides that tax ballot issues of the type proposed by the Tax Initiated Ordinance may only be presented at a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years; and

WHEREAS, as it is not possible to place the Tax Initiated Ordinance on the general election ballot, the earliest the Tax Initiated Ordinance can be placed on the ballot is November 1, 2021 (the first Tuesday in November of the odd-numbered year).

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, THAT:

<u>Section 1.</u> Pursuant to C.R.S. § 31-10-108 the Town Board calls a special election to be held on January 12, 2021.

<u>Section 2.</u> Pursuant to C.R.S. § 31-10-108 the Town Board calls a special election to be held on November 1, 2021.

<u>Section 3.</u> There is hereby submitted to a vote of the electors of the Town of Wellington,

Colorado at the special election to be held on January 12, 2021 the following ordinance/question:

BALLOT TITLE: Removing prohibitions on the sale of medical and retail marijuana in the Town of Wellington, Colorado.

SUBMISSION CLAUSE: Shall the sale of Retail and Medical Marijuana be lawful in the Town of Wellington Colorado and shall the Town be authorized to issue licenses for the sale of Retail Marijuana and Medical Marijuana in the C-3 zoning district in accordance with the Marijuana Initiated Ordinance submitted to the Town Clerk on ____________ and published by the Clerk.

Section 4. The Board of Trustees hereby authorizes and directs the officers of the Town to certify on or before December 15, 2020, the ballot title and submission clause, in a form to be finally approved by the Town Board, in substantially the form set in Section 3. Such ballot title shall be submitted to the eligible electors of the Town at the January 12, 2021, special election.

Section 5.. There is hereby submitted to a vote of the electors of the Town of Wellington, Colorado at the November 1, 2021, special election the following ordinance/question:

BALLOT TITLE: Authorizing the charging of a special sales tax on sales of Retail Marijuana.

SUBMISSION CLAUSE: Shall the Town of Wellington imposing an additional special sales tax of three and one half percent (3.5%) on the sale of retail marijuana and retail marijuana products, with the rate of such tax being allowed to be decreased or increased without further voter approval so long as the rate of the tax does not exceed five percent (5%) in accordance with the Tax Initiated Ordinance submitted to the Town Clerk on ____________ and published by the Clerk.

Section 6. The Town Board of Trustees hereby authorizes and directs the officers of the Town to certify on or before December 15, 2020, in a form to be finally approved by the Town Board, the ballot title and submission clause in substantially the form set in Section 1. Such ballot title shall be submitted to the eligible electors of the Town at the November 1, 2021 election.

Section .7 Town of Wellington staff is directed to prepare a TABOR election notice and mail that notice to all registered electors for the November 1, 2021 special election as required by TABOR and applicable law.

Section 8: By December 15, 2020, or such later date as may be established by the Town Board, the Clerk shall provide dates to the Town Board by which registered electors of the Town may submit written comments to the Clerk to be included in a Pro and Con Summary in the TABOR election notice.

INTRODUCED, READ AND ADOPTED at a regularly scheduled meeting of the Town of Wellington, Colorado, on the 22nd day of September 2021.

TOWN OF WELLINGTON, COLORADO

____

Troy Hamman, Mayor

ATTEST:

____

Krystal Eucker, Town Clerk

Due to COVID19, the Town of Wellington, Colorado is providing virtual coverage of Town Board of Trustees meetings to protect the health of citizens, Board of Trustees members and staff. Meetings will not be held in the Board of Trustees chamber until further notice.

Memo

March & Olive, LLC

Wellington Town attorney

TO: Kelly Houghteling, Interim Town Administrator; Krystal Eucker, Wellington Town Clerk; Wellington Town Board

FROM: Brad March
March and Olive, LLC
1312 S. College Avenue, Fort Collins, CO
970-482-4322(p); 970-482-5719(f)

RE: Update Initiated election petitions

DATE: October 8, 2020

This memorandum is intended to further summarize the status of the citizen proposed initiated marijuana ordinances (the Initiated Ordinances) and to update the memorandum previously provided to the board, dated September 6, 2020. On September 8, 2020, two protests were filed protesting the clerk's determination that the two pending initiated ordinance petitions were sufficient. Filing of protests is allowed by C.R.S. § 31-11 110. The town board had appointed the municipal judge to act as the hearing officer in the event the protests were filed. The judge heard the protests and considered the record and issued a ruling as to the protests on September 20, 2020. The hearing officer's order became available on Monday, September 21, 2020.

November 3, 2020 election: The board was advised by a prior memo that for the Initiated Ordinances to be placed on the November 3, 2020 general election ballot the board had needed to schedule a special election by September 4, 2020 (60 days before the November 3 election). The board had no obligation to schedule the special election at the same time as the general election. The town clerk had voiced concern, in retrospect with good cause, that the election should not be scheduled until after the protest periods allowed by CRS §31-11-110 had expired. By the statutory scheme surrounding municipal elections and Initiated Ordinances

1) Special elections can only be scheduled on a Tuesday within specific time parameters; and
2) A special election has to be scheduled 90 date before the election date (CRS § 31-10-108), and
3) If a special election is not held on the general election date, the special election may not be called within sixty days before the general election or within the thirty-two days after the, general election (CRS § 31-11-104(1); and
4) the board must send an initiated ordinance that is sufficient to the registered electors of the municipality at a regular or special election held not less than sixty days and not more than one

hundred fifty days after the final [1]determination of petition sufficiency, unless otherwise required by the state constitution, (CRS § 31-11-104(1).

Because the special election was not called November 3, 2020, the earliest election to be held would be December 8, 2020 (more than 32 days after the general election) and January 12, 2020 (within 150 days after the Clerk's determination of sufficiency). [2]

Hearing officer determination: The judge as the hearing officer dismissed one of the protests on the basis it was not properly submitted and held that the other protest only raised objections to the ordinance allowing the sale of marijuana (the "marijuana sales ordinance") and did not protest the ordinance which would allow taxation of marijuana sales and the related TABOR questions. The marijuana sales ordinance was found to be insufficient in two areas. First, specific sections raised administrative questions which were not properly raised by initiated ordinance, and second the petitioners failed to file a required circulator's report at the time the ordinances were submitted to the clerk.

Result of Hearing: Absent further action, the marijuana sales ordinance is insufficient and is not presented to the voters. The town clerk and our office recommended at the board's September 22nd meeting that issues involving the scheduling a special election for the marijuana sales ordinance be tabled pending a possible appeal by the proponents of the marijuana sales ordinance. The board was also advised that the TABOR/tax ordinance need to be placed on the ballot according to constitutional TABOR requirements on November 2, 2021. This date is set by the requirements of the Colorado Constitution which provides a TABOR issues may only be considered by the voters at specific times, in this case at a general election (the date of which has passed) or on the first Tuesday of November in an odd numbered year.

Court actions. Since the hearing officer's determination was issued the components of the ordinances have filed three separate lawsuits in the Larimer County District Court.

1) Prosperous Wellington et al v. Town of Wellington et al –(case number 2020CV030634) (the First Case). This case was filed on September 17, 2020 and cited to a series of state statutes as the basis for jurisdiction by which the court could review the petitioner's claims. The court fairly summarily reviewed the jurisdictional claims and dismissed the action.
2) Morgen, Tim et al v. Town of Wellington et al (case number 2020CV030669 (the Second case). this case was filed on September 30, 2020. The court set an immediate hearing in the matter was preliminarily heard on Wednesday, October 7, 2020. The hearing was primarily designed to identify issues. The protesters were party to this action. The court reviewed the standard under

[1] Relative to the TABOR / tax ordinance there is a special exception in the statute that would allow voter consideration to occur at a later date, outside the hundred and 50 day time limit

[2] Note that the determination of the data sufficiency may been tolled by the finding of the hearing officer and now by the pending court action(s) print described in the below sections. The hearing officer's head having made a determination that the marijuana petition was insufficient a new date, other than the date of determination of sufficiency by the clerk may apply. If this is the case, if the court overrules the hearing officer the date of sufficiency would be the date the court action is final. If the court's action sets aa new sufficiency date a special election held not less than sixty days and not more than one hundred fifty days after the final determination of petition sufficiency by the court.

which the action should go forward. Petitioners have urged that the court should proceed under Colorado rule of civil procedure 57. The case law seems to provide that the matter should be reviewed under Colorado rule of civil procedure 106. The standards by which the court reviews the hearing officer's determination under the two rules differs. In addition, if the court determines that a rule 57 review was appropriate additional evidence can be introduced into the record upon which the court can basis determination. This would likely require digital hearings for evidence and to be presented.

3) <u>Prosperous Wellington et al v. Town of Wellington et al</u> (case number <u>2020CV030678</u>) on October 5, 2020 the proponents filed 1/3 action. The third filing, like the preceding two, was voluminous. The petition for review consisted of 10 pages with numerous attachments. I've not had an opportunity as of yet to review the third case petition but will attempt to do so by the October 13 board meeting.[3]

At the October 7 hearing the judge considered the potential of combining the second and third actions for purposes of issuing a decision. As the defendant's attorneys had not had an opportunity to review the third action and the protesters were not parties to the third action the judge agreed that the question of consolidation the second and third actions should be set off until October 28 when a follow-up hearing has been scheduled.

At this juncture, particularly based upon the posture as defined at the recent hearing, the court is looking at proceeding to consider the issues presented in the lawsuits under rule 106. In this setting it is my role as town attorney to defend the hearing officer's decision. My belief is that those determinations were correct based upon applicable law. The board certainly could instruct me to take a contrary role.

In an effort to try to resolve disputes and curtail litigation, I urged the attorney for the proponents of the ordinances to consider allowing the town to refer to the voters a simple yes/no question surrounding whether the voters support allowing the sale of retail and medical marijuana in the Town. If the vote came out in the affirmative the town would adopt ordinances, similar to other towns to administer marijuana sales. I advised counsel for the proponents it was my belief that staff would include the proponents in the process to draft the implementing administrative ordinances, with the caveat that the town would not be willing to emaciate the local licensing authority's powers to enforce laws surrounding marijuana sales. I was told that the proponents of the ordinance were not willing to modify the ordinances to afford the local licensing authority traditional enforcement powers. The town board may still want to consider calling a special election and referring a yes / no question related to whether the towns voter's wish to allow marijuana sales.[4]

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[3] Unfortunately, I am scheduled to be out of town from Friday, October 9th through Monday, October 12th.

[4] As previously noted, as previously noted, it is intended that the question of a special tax on marijuana will be presented to the voters on November 1, 2021 regardless of further action relative o the marijuana sales question.

LARIMER COUNTY SHERIFF'S OFFICE

Justin E. Smith, Sheriff

One Agency *One Mission* *Public Safety*

October 6, 2020

Town of Wellington
Attn: Kelly Houghteling, Interim Town Administrator
PO Box 127
Wellington, Colorado 80549

Dear Ms. Houghteling:

Monthly from January through December 2020, the Larimer County Sheriff's Office will provide 342 hours of supervisor time, 1,026 hours of general patrol service, 85 hours of investigating services, 171 hours of desk deputy time, and 171 hours of school resource services per month within the corporate limits of the Town. The supervisor time and general patrol service hours are provided by deputies assigned to the Town.

During the month of **August 2020**, non-assigned deputies spent a total of **181.57** hours in Wellington responding to calls, patrolling, and making contacts in the town.

During the month of **August 2020** there were **10.50** hours worked by Investigations.

During the month of **August 2020** there were **20.0** hours worked by Northern Colorado Drug Task Force.

Of Note: On August 18th deputies responded to a call of a male in a house on Langland Street who had a warrant for his arrest. Upon seeing deputies the male barricaded inside the residence, resulting in a full SWAT response to rescue innocent people inside and arrest the wanted person. Once the innocent people safely exited the residence, communication was established with the male who was convinced to surrender himself to SWAT by negotiators, who were aided by Wellington Deputy Carbajal's language skills.

Pursuant to the Law Enforcement Agreement between the Town of Wellington and Larimer County, applicable documenting monthly forms are attached.

Thank you,

Joe Shellhammer

Captain Joe Shellhammer
(970) 498-5103
Attachments

LARIMER COUNTY SHERIFF'S OFFICE

Wellington Calls for Service and Patrol Time Report

(For Non-Wellington Officers)

8/1/2020 to 8/31/2020

****This report will not calculate time prior to April 1, 2014****

****Officers excluded from the report data: 9S8, 9Z89, 9E87, 9E5, 9E27, 9E3, 9E2, 9E50, 9E31, 9E7, 9X106*

Wellington Time:

Time on Calls and Patrolling (minutes/Hours) - Non-Wellington Units - 8/1/2020 to 8/31/2020

		Total Minutes Hours	**Call/Contact Time**	**Patrol Time**
Total	**Minutes** **Hours**	10,894.00 181.57	8,409.00 140.15	2,485.00 41.42
August 2020	**Minutes** **Hours**	10,894.00 181.57	8,409.00 140.15	2,485.00 41.42

Call/Contact Time: Time spent on dispatched or self initiated calls and person or vehicle contacts.

Patrol Time: Time spent patrolling in the Town when not on a specific call or contact.

Larimer County Sheriff's Office

Investigator Hours by Town\Squad\Officer

Date Range: 8/1/2020 to 8/31/2020

	Total
Total	10.50
Wellington	10.50
LIPE	5.00
L08002	5.00
L15055	0.00
L96023	0.00
LIPR	5.50
L05002	0.00
L05015	0.00
L13019	4.00
L17029	1.50

Wellington Monthly Report

August 2020

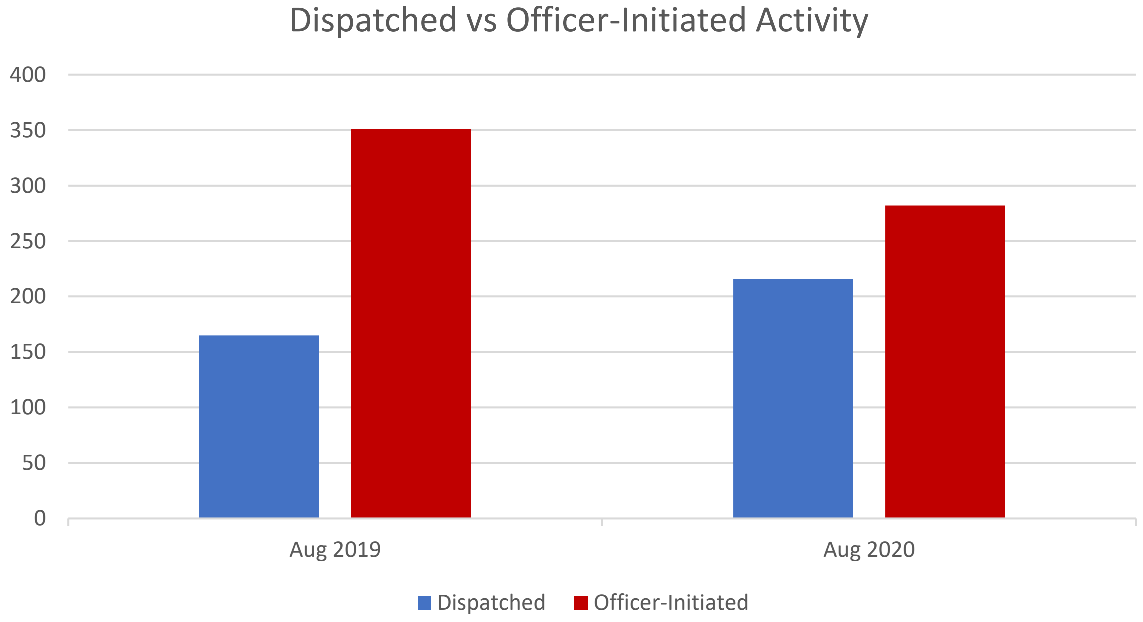
Larimer County Sheriff's Office

Christine Harpel
Senior Administrative Assistant
9/9/2020

August 2020 Totals

Dispatched / Officer-Initiated Activity

Dispatched Calls	216
Officer Initiated	282
Aug 2020 Total	498



- Dispatched calls were Up 51 or 31% from August 2019
- Officer-Initiated Activity was Down 69 or 20% from August 2019

	Aug 2019	Aug 2020
Dispatched Calls	165	216
	32%	43%
Officer Initiated	351	282
	68%	57%
Total	516	498

- 43% were Dispatched Calls
- 57% was Officer-Initiated Activity

August 2020 Calls for Service

Calls for Service Comparison

Call Types A-M

Call Type	2017	2018	2019	Avg 17-19	2020	% Change 3-Yr Avg to 2020
Alarm Calls	9	8	8	8.33	4	-52%
Alcohol Calls	2	2	0	1.33	1	-25%
Animal Calls	3	8	7	6.00	17	183%
Assault	6	1	0	2.33	1	-57%
Assist Other Agency (Fire/Med)	14	9	7	10.00	6	-40%
Bar Checks	0	0	1	0.33	0	-100%
Burglary	1	0	0	0.33	0	-100%
Child abuse	2	0	0	0.67	1	50%
Citizen Assist	17	23	24	21.33	19	-11%
Civil	12	19	12	14.33	19	33%
Criminal Mischief	3	0	3	2.00	3	50%
Death	0	1	0	0.33	0	-100%
Disturbance	5	11	2	6.00	11	83%
Drug case	2	5	1	2.67	2	-25%
DUI Arrest	1	3	1	1.67	2	20%
Extra Checks & Business Check	211	105	152	156.00	144	-8%
Family Problems	5	11	15	10.33	18	74%
Fire Ban	0	0	0	0.00	1	N/C
Fireworks	1	2	0	1.00	0	-100%
Follow up	40	34	31	35.00	39	11%
Found property	1	0	2	1.00	4	300%
Fraud	3	8	4	5.00	8	60%
Harassment	10	5	3	6.00	7	17%
Juvenile Problem	8	3	4	5.00	5	0%
Lost Property	0	2	2	1.33	3	125%
Missing Person (Child/Adult)	1	1	4	2.00	4	100%
Motor Vehicle Accident	0	3	8	3.67	0	-100%
Municipal Code Violation	2	0	3	1.67	23	1280%

Call Types N-Z

Call Type	2017	2018	2019	Avg 17-19	2020	% Change 3-Yr Avg to 2020
Neighbor Problems	3	0	0	1.00	3	200%
Noise\Party Complaint	5	5	5	5.00	6	20%
Pedestrian Contact/Subject St	8	11	12	10.33	7	-32%
Private Tow	2	3	4	3.00	4	33%
REDDI Report	2	3	2	2.33	3	29%
School Check	5	12	10	9.00	0	-100%
Sex assault	1	3	2	2.00	3	50%
Sex Offender Check	28	6	4	12.67	6	-53%
Solicitor	0	1	0	0.33	2	500%
Suicide	3	1	0	1.33	1	-25%
Suicide Att/Threat	4	5	3	4.00	5	25%
Suspicious Circumstances	34	35	32	33.67	30	-11%
Theft	8	7	5	6.67	10	50%
Traffic Problem	15	13	22	16.67	17	2%
Traffic Stop	40	84	76	66.67	18	-73%
Trespass	1	1	0	0.67	0	-100%
Vehicle Theft	0	5	1	2.00	1	-50%
Vehicle Trespass	3	1	4	2.67	4	50%
VIN Check	14	2	17	11.00	7	-36%
Warrant Attempt/Arrest	2	8	7	5.67	4	-29%
Welfare Check	13	15	12	13.33	12	-10%
Unspecified	4	10	4	6.00	13	117%
TOTALS	**554**	**495**	**516**	**521.67**	**498**	**-5%**

% Change 3-Yr Avg to 2020 = N/C because value cannot divide by 0

Calls for Service DOWN 18 or 4% from August 2019

August 2020 calls DOWN 5% from August 2017-2019 Average

August 2020 Call Categories

Crime Type Averages / Trends

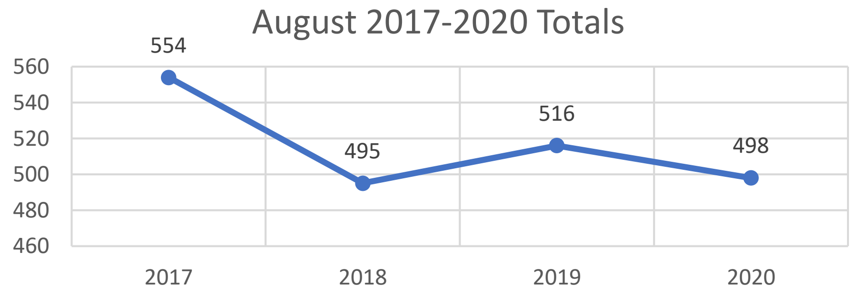
Property Crimes					
Call Type	**2017**	**2018**	**2019**	**Avg 17-19**	**2020**
Burglary	1	0	0	0.33	0
Theft	8	7	5	6.67	10
Vehicle Theft	0	5	1	2.00	1
Vehicle Trespass	3	1	4	2.67	4
Property Crimes Totals	**12**	**13**	**10**	**11**	**15**

Persons Crimes					
Call Type	**2017**	**2018**	**2019**	**Avg 17-19**	**2020**
Assault	6	1	0	2.33	1
Missing Person (Child/Adult)	1	1	4	2.00	4
Robbery	0	0	0	0	0
Sex assault	1	3	2	2.00	3
Weapon Related (menacing,	0	0	0	0	0
Persons Crimes Totals	**8**	**5**	**6**	**6.33**	**8**

Disorder/Other Crimes					
Call Type	**2017**	**2018**	**2019**	**Avg 17-19**	**2020**
Alcohol Calls	2	2	0	1.33	1
Animal Calls	3	8	7	6.00	17
Criminal Mischief	3	0	3	2.00	3
Disturbance	5	11	2	6.00	11
Drug case	2	5	1	2.67	2
Family Problems	5	11	15	10.33	18
Harassment	10	5	3	6.00	7
Juvenile Problem	8	3	4	5.00	5
Noise\Party Complaint	5	5	5	5.00	6
Suspicious Circumstances	34	35	32	33.67	30
Trespass	1	1	0	0.67	0
Disorder Crimes Totals	**78**	**86**	**72**	**78.67**	**100**

Red numbers indicate a DECREASE in crime from July 2017-2019 Average

Yellow backgrounds indicate an INCREASE in crime from July 2017-2019 Average



August 2020 Traffic

Traffic Citations	8/19	8/20
Traffic Citations Issued	15	1
Traffic Verbal Warnings	46	14
Traffic Written Warnings	6	16

- Citations Issued Down 14
- Verbal Warnings Down 32
- Written Warnings Up 10

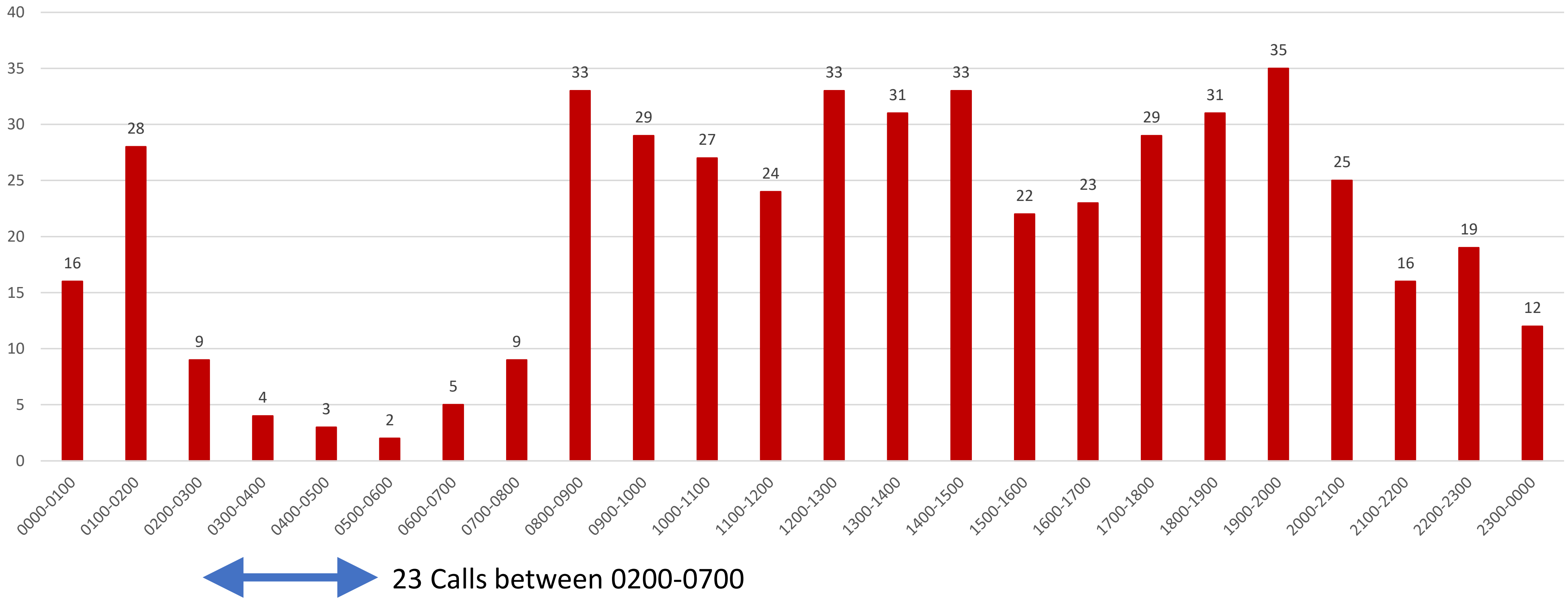
Call Type	8/19	8/20
Traffic Stop	76	18
Motor Vehicle Accident	8	0
DUI Arrest	1	2
Traffic Problem	22	17
REDDI Report	2	3

- Traffic Stops Down 58 or 76%
- MV Accidents Down 8
- DUI Arrests Up 1
- Traffic Problems Down 5 or 23%
- REDDI Reports Up 1

August 2020

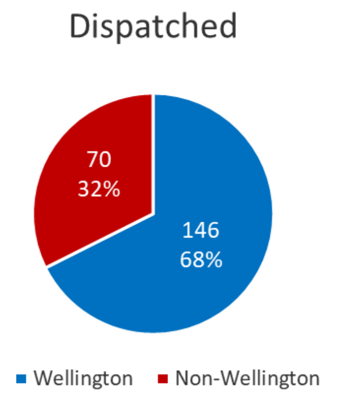
Call Totals by Hour

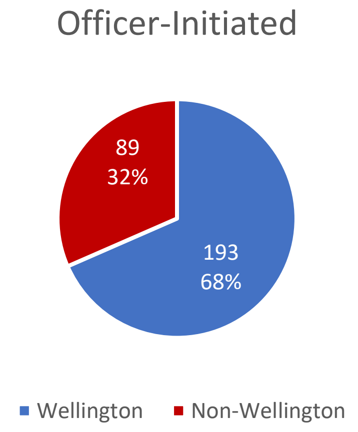
Busiest Hours
1900-2000 (35)
0800-0900, 1200–1300, & 1400-1500 (33)

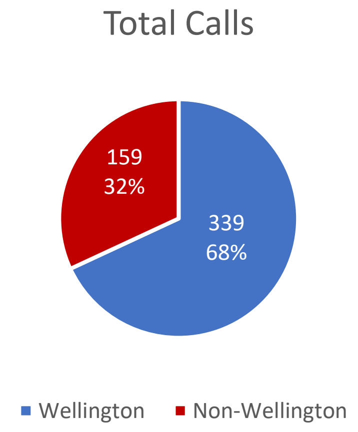


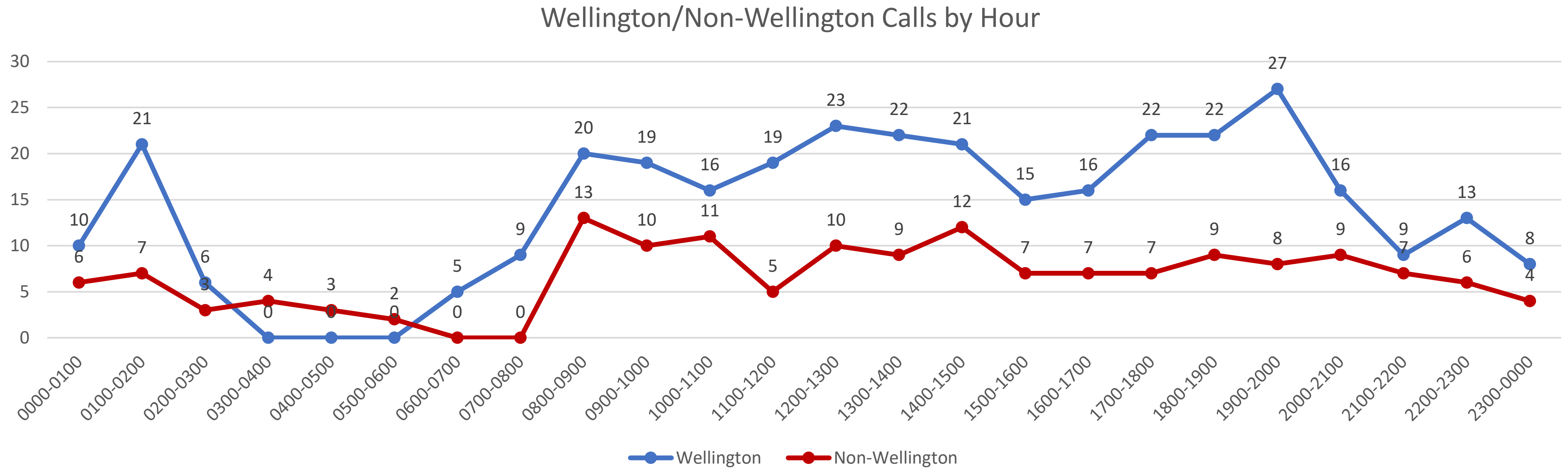
August 2020

Wellington/Non-Wellington Units









August 2020

Response Times / Time on Calls
Dispatched Calls Only
All Times in Minutes

Average Response Time (All Units)		
High		0
Medium		3.76
Low		29.84
Avg. Response Time		25.80

Average Time on Calls (All Wellington Calls)			
High			0
Medium			6.86
Low			52.55
Avg. Time			45.48