



BOARD OF TRUSTEES
February 11, 2020
LEEPER CENTER – 3800 WILSON AVE.

Regular Meeting - 6:30 PM

AGENDA

A. CALL TO ORDER

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

B. COMMUNITY PARTICIPATION

1. **Public Comment** - Individuals wishing to participate in Public Comments (non-agenda item) are requested to sign up on the form provided on the podium. When you are recognized, step to the podium, state your name and address then speak to the Town Board of Trustees. Please limit comments to three (3) minutes.
2. Presentation
 - a. Comprehensive Plan Presentation
 - Cody Bird, Planning Director
 - Logan Simpson Design

C. CONSENT AGENDA

1. Board of Trustees Work Session Summary for Jan 21, 2020
2. Board of Trustees Minutes for January 28, 2020

D. ACTION ITEMS

1. Contract Approval — Infusion Architects
 - Staff presentation: Kelly Houghteling, Deputy Town Administrator & Randell Johnson, Infusion Architects
2. NPIC Lateral Improvements at BNSF Crossing Project

E. OTHER BOARDS

F. REPORTS

1. Town Attorney
2. Town Administrator
3. Staff Communications
4. Board

G. EXECUTIVE SESSION

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 the Deputy Clerk at Town Hall or at 970-568-3380 ext. 110 at least 24 hours in advance.



Board of Trustees Meeting

Date: February 11, 2020
Submitted By: Cynthia Sullivan, Deputy Clerk
Subject: Board of Trustees Work Session Summary for Jan 21, 2020

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Minutes from Work Session 01212020

BOARD OF TRUSTEES
January 21, 2020
LEEPER CENTER – 3800 WILSON AVE.

Regular Meeting - 6:30 AM WORK SESSION MINUTES

A. ITEMS

1. GovHR Finance Director Recruitment

Katie Rush- GovHR - Recruiting for Finance Director

Ms. Rush gave an overview of their process including the use of announcements and brochures about the position. She said that Mr. Cannon will put together a selection committee. They will have a meet and greet with candidates and Board on Feb 20-21. The projection is to fill the position by the middle of May.

Mayor Hamman asked if the Board would see the job description before it is published. Ms. Rush said they would get the description out and reviewed some of the qualifications they would look for.

Trustee Sattler asked about Finance Director/Treasurer. There was a discussion about whether these should be separate individuals.

Mayor Hamman asked how many candidates they would bring. Ms. Rush said 6-8.

2. Water Rate Study

Stacy Helleckson and Toby Fedder of Woodard & Curran gave an overview of the company. The presentation included the following items:

- Funding opportunities, analyze. Use of a pay as you go to fund the projects.
- Models for utilities to help project future costs, and projects.
- Reviewed the Methodology for the rate study and evaluating historical consumption.

The following steps will be used for the rate study - Operational Costs, Establishing Revenue Requirements, Estimated Revenue Requirements, Evaluating Usage Trends, Projecting Future Rates / Costs, Projecting Expected Rate Performance, Construction of Rate Models, Connection Charges, Recommendations. Rate Modification Options (see report)

Discussion Items

- Cost of shares and the agreement with North Poudre Irrigation.
- How to make increases more palatable without using too much of the reserve.
- Connection (tap fees on new construction are not included) Consumption and operation cost would be used.

3. Chamber/Town co-location discussion

Ms. Vance reviewed the sharing of space with the Chamber in the Harrison house. She gave the reasons for consolidating the locations and the benefits when coordinating on projects.

Looking for consensus of Board members to going forward with a Memorandum of Understanding with the Chamber.

4. 2020 Master Plan Update

Mr. Cannon gave an overview of the comprehensive look at what projects and study we are doing this year.

Department Head reported on the individual studies.

Ms. Houghteling - Space need assessment.

Ms. Vance - waiting on zoning before economic plan can be started.

Mr. Gowing - pavement study coming to an end, re vamp priorities before 2021.

Mr. Myer - water distribution system study. water and wastewater master plan.

Mr. Gowing - stormwater master plan and drainage

Ms. Vance - Parks master plan. (Rec center feasibility study)

Mr. Bird - Comprehensive Plan - Feb Public engagement for Downtown master plan and land use change.

Mr. Sexton - Utility Rate Study.

Ms. Houghteling - Employment study.

5. Organizational Chart

Mr. Cannon reviewed the changes to the structure.

Adding assistant to the town administrator for Grants and purchasing.

There was discussion about how the Finance Director/Treasurer should be connected to the Town Administrator and the Board.



Board of Trustees Meeting

Date: February 11, 2020
Submitted By: Cynthia Sullivan, Deputy Clerk
Subject: Board of Trustees Minutes for January 28, 2020

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Board of Trustee Minutes for January 28, 2020

BOARD OF TRUSTEES
January 28, 2020
LEEPER CENTER – 3800 WILSON AVE.

Regular Meeting - 6:30 PMREGULAR MEETING –

MINUTES

A. CALL TO ORDER

The Regular Board Meeting was called to order at 6:30 P.M., January 28, 2020 at the Leeper Center, 3800 Wilson Ave., Wellington CO.

1. Pledge of Allegiance

2. Roll Call

TRUSTEES DANIEL SATTTLER, WYATT KNUTSON, JOHN JEROME, TIM
PRESENT: WHITEHOUSE, JOHN EVANS, TROY HAMMAN

TRUSTEES MATT MICHEL
ABSENT:

PRESIDING TROY HAMMAN, MAYOR
:

ALSO ED CANNON, TOWN ADMINISTRATOR
PRESENT: KELLY HOUGHTELING, ASSISTANT TOWN MANAGER
CYNTHIA SULLIVAN, DEPUTY CLERK
CODY BIRD, TOWN PLANNER
BOB GOWING, PUBLIC WORKS DIRECTOR
MICHELLE VANCE, ECONOMIC DEVELOPMENT MANAGER
TYLER SEXTON, ASSISTANT FINANCE DIRECTOR
DAVE MYER, TOWN ENGINEER
DANIEL JONES, WATER TREATMENT OPERATOR
BRAD MARCH, TOWN ATTORNEY OFFICE

3. Amendments to Agenda

4. Conflict of Interest

B. COMMUNITY PARTICIPATION

1. Public Comment

The following people announced their candidacy for Board of Trustees.
Ashley Macdonald, Jon Gaiter and Rebekka Kinney.

Jon Gaiter, 8132 Fourth Street, asked if the Board Packet was published on the Website. Ms. Sullivan said it is in a new location and she is working on adjustment, so it is more accessible.

Rebekka Kinney, 4492 Emerald Bay Lane, said she would be putting together some community forms to see what residents would like to see in Wellington and one geared toward families with children.

Mayor Hamman asked if any candidate forums were scheduled. Ms. Sullivan said that outside groups usually contact us about having forums.

2. Presentation

Wellington Economic Development

a.

- Staff presentation: Michelle Vance, Economic Development Director

Ms. Vance presented on the growth of Wellington and economic opportunities.

The following are issues and programs that are being looked at:

Leakage

Possible building locations

Business coming soon

Current business support

Resources

Business retention & expansion. (Scale up) work with the Chamber and the County to provide support and education

Water Treatment Plant Independent Review and Wastewater Master Plan

b.

- Presentation: Jacobs Engineering Group

Water Treatment Plant Engineering review from Jacobs Engineering.

Richard Saxton of Jacobs Engineering gave an update about the review of data and design. They are looking at what parts of the design to keep and what might not be needed. He explained the sampling of ponds for wet tests. Review of current work and the possibility of offsite properties or to working with another district.

Trustee Sattler asked about utilizing water from a different resource. (work with North Poudre Irrigation).

Mr. Myer gave an update on the Wastewater Treatment Plant.

3. Proclamation

a. School Choice Week Proclamation

Mayor Hamman read proclamation.

C. CONSENT AGENDA

1. Board of Trustee Minutes for January 14, 2019

Trustee Sattler said the amount of the purchase price for the property at 3804 Cleveland needed to be corrected.

TRUSTEE Tim Whitehouse, AND TRUSTEE Daniel Sattler to approve the Consent Agenda with correction. Motion Passed.

D. ACTION ITEMS

Resolution 4 - 2020 — Administrator's Organizational Plan

1.

- Staff presentation: Ed Cannon, Town Administrator

Trustee Jerome questioned the position of Assistant to the Town Administrator. He thought that position was budgeted under the Finance Department. Would we not need to do an amendment to the budget to change the department?

Mr. Cannon explained where the money was budgeted and what the position would include.

Trustee Sattler had a concern regarding the economic development director being over recreation and library.

TRUSTEE TIM WHITEHOUSE, AND TRUSTEE JOHN JEROME to table and refer back to a work session. Motion Passed.

Refund Request — Housing Catalyst PILOT

2.

- Staff presentation: Ed Cannon, Town Administrator

This is a yearly request from The Housing Authority.

TRUSTEE TIM WHITEHOUSE, AND TRUSTEE JOHN JEROME to approve the refund of \$2,751.00 for PILOT. MOTION PASSED.

Ordinance 4-2020 - Conditionally Annexing Poudre School District Annexation to the Town of Wellington

3.

- Staff presentation: Cody Bird, Planning Director

Mr. Bird reviewed the procedure for the public hearing. He gave the background of the annexation.

Public Hearing was opened at 7:36 pm.

Jon Gaiter asked if there are costs to the town to bring this property into town, and question about water availability.

Public hearing was closed at 7:38 pm.

Mr. Bird said the town has a possibility for contributing to the over sizing of the utility lines. There is adequate capacity for water and sewer on the site.

TRUSTEE DANIEL SATTTLER, AND TRUSTEE JOHN EVANS to Adopt an Ordinance conditionally annexing Poudre School District Annexation to the Town of Wellington and zoning the property C1- Community Commercial District. Motion Passed.

Final Plat - Poudre School District Subdivision

4.

- Staff presentation: Cody Bird, Planning Director

Mr., Bird said the reason to table this issue is due to a delay of Planning Commission review. He suggested the public hearing be continued on Feb 25, 2020.

TRUSTEE DANIEL SATTTLER, AND TRUSTEE WYATT KNUTSON to table issue until Planning Commission reviews. Public Hearing continued until February 25, 2020. Motion Passed.

Minor Subdivision - Lots 16-19, Block 1, Sundance at Daubert Farm, First Filing and Vacation of Road Right-of-way

5.

- Staff presentation: Cody Bird, Planning Director

Mr. Bird said this is for the final plat of 4 lots to allow for easements and will create a tract for water lines.

The second part of the request is to vacate road right of way to eliminate the traffic circles on Buffalo Creek Parkway. The Planning Commission had concerns about the traffic speed on this road.

2 separate ordinances.

TRUSTEE DANIEL SATTLER, AND TRUSTEE JOHN EVANS to approve Ordinance 5-2020 to approve the minor subdivision. Motion Passed.

TRUSTEE JOHN EVANS AND TRUSTEE TIM WHITEHOUSE to approve Ordinance 6-2020 to approve vacation of road right-of-way. Motion Passed

E. OTHER BOARDS

F. REPORTS

1. Town Attorney

Mr. March said the closing on the house at 3804 Cleveland is scheduled for Wednesday January 29th.

He mentioned a possible amendment to the code and discussion about the vacant seat.

2. Town Administrator

Mr. Cannon updated the Board on meeting regarding water supply.

3. Staff Communications

a. Water & Wastewater Production for 2019

b. Treasurer's Report

Tyler Sexton gave the report on bills. He pointed out the report from July to the end of the Year.

There was discussion about PCards - Report should be a digital file for shorter period of time.

4. Board

Mayor Hamman said that Matt Michael tenured his resigned from the Board of Trustees.

Discussion at next meeting. Mr. March will put together information on the procedure when a seat is vacated.

Tim asked about the traffic signals. Mr. Cannon reporting about a meeting on this issue. Road signs and signals to be purchased. Looking at sharing costs with the fire department and the schools. Fire department wants the ability to interrupt the light at third street for deployment.

G. EXECUTIVE SESSION

H. ADJOURN

Board of Trustees Meeting

Date: February 11, 2020

Submitted By: Kelly Houghteling, Deputy Town Administrator
Contract Approval — Infusion Architects

Subject:

- **Staff presentation: Kelly Houghteling, Deputy Town Administrator & Randell Johnson, Infusion Architects**

EXECUTIVE SUMMARY

Staff is seeking approval to sign a professional service agreement with Infusion Architects for the Town Hall Space Needs Assessment.

BACKGROUND / DISCUSSION

On January 14, 2020 the Board of Trustees authorized staff to pursue a contract with Infusion Architects for the Town Hall Space Needs Assessment. The contract received legal review from Brad March's Office. The agreement is attached. This is a standard form AIA agreement between the Town and the architect. This is currently in draft form, until the Board votes to approve. During the meeting, the Board has an opportunity to meet the Infusion Architects team and ask any questions regarding timeline or process.

Staff is also seeking volunteers for 1-2 Board members who would like to serve on the project Steering Committee. We will work to be efficient as possible and the commitment is likely 10 – 15 hours over the next three (3) months. This would include initial meetings and reviews of work along the way. The Steering Committee will bring the larger decisions back to the entire Board of Trustees for feedback and approval.

STAFF RECOMMENDATION

Staff recommends approving a contract with Infusion Architects.

ATTACHMENTS

1. Infusion AIA Agreement
2. Scope of Work

AIA® Document B102™ – 2017

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the 7th day of February in the year Two Thousand Twenty
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Town of Wellington
3735 Cleveland Avenue
P.O. Box 127
Wellington, CO 80549

and the Architect:
(Name, legal status, address and other information)

Infusion Architects, LLC
206 East 4th Street, Ste. 250
Loveland, CO 80537

for the following (hereinafter referred to as "the Project"):
(Insert information related to types of services, location, facilities, or other descriptive information as appropriate.)

Town Hall Space Needs Assessment & Site Selection
Scope of Services as described in Exhibit A

The Owner and Architect agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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TABLE OF ARTICLES

- 1 ARCHITECT'S RESPONSIBILITIES
- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
- 4 CLAIMS AND DISPUTES
- 5 TERMINATION OR SUSPENSION
- 6 COMPENSATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2.)

Space Needs Assessment and Site Selection Services

§ 1.1.1 The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 The Architect identifies the following representative authorized to act on behalf of the Architect with respect to the Project.
(List name, address, and other contact information.)

Randell Johnson, AIA, Principal
Infusion Architects, LLC
206 East 4th Street, Ste. 250
Loveland, CO 80537

§ 1.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 6.2.3.

§ 1.5.1 Commercial General Liability with policy limits of not less than One Million dollars (\$1,000,000) for each occurrence and Two Million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 1.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 1.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 1.5.1 and 1.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 1.5.4 Workers' Compensation at statutory limits.

§ 1.5.5 Employers' Liability with policy limits not less than One Million dollars (\$ 1,000,000) each accident, One Million (\$ 1,000,000) each employee, and One Million (\$ 1,000,000) policy limit.

§ 1.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million dollars (\$ 2,000,000) per claim and Two Million dollars (\$ 2,000,000) in the aggregate.

§ 1.5.7 **Additional Insured Obligations.** If requested by the Owner, to the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 1.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5.

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 2.2 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
(List name, address, and other contact information.)

Kelly Houghteling
Town of Wellington
3735 Cleveland Ave.
Wellington, CO 80549

§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 2.4 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 2.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 2.6 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the purposes of evaluating, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 5 and Article 6. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1. The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.4.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 3.5 Except as otherwise stated in Section 3.3, the provisions of this Article 3 shall survive the termination of this Agreement.

ARTICLE 4 CLAIMS AND DISPUTES

§ 4.1 General

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect ~~waive shall attempt to~~ obtain waivers of all rights against each other and against the contractors, consultants, agents, and employees of the

other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require-request of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

§ 4.2 Mediation

~~§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

☐ Arbitration pursuant to Section 4.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 4.3 Arbitration

§ 4.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the

date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 4.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 4.3.4 Consolidation or Joinder

§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 5.6 If the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 5.7 In addition to any amounts paid under Section 5.6, if the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

.2 Licensing Fee, if the Owner intends to continue using the Architect's Instruments of Service:

§ 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate
(Check the appropriate box.)

☐ One year from the date of commencement of the Architect's services

☒ One year from the date of Substantial Completion

☐ Other

(Insert another termination date or refer to a termination provision in an attached document or scope of service.)

If the Owner and Architect do not select a termination date, this Agreement shall terminate one year from the date of commencement of the Architect's services.

§ 5.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 5.7.

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect as set forth below for services described in Section 1.1, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

A Fixed Fee of Thirty-two Thousand dollars (\$32,000.00)

§ 6.2 Compensation for Reimbursable Expenses

§ 6.2.1 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 6.2.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

§ 6.2.3 **Architect's Insurance.** If the types and limits of coverage required in Section 1.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 1.5, and for which the Owner shall reimburse the Architect.)

Not Applicable

§ 6.3 Payments to the Architect

§ 6.3.1 Initial Payments -None Required

§ 6.3.1.1 An initial payment of (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. 11

§ 6.3.2 Progress Payments

§ 6.3.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

1/2 % per month

§ 6.3.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 6.3.2.3 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

§ 7.2 Except as separately defined herein, terms in this Agreement shall have the same meaning as those in AIA Document A201™-2017, General Conditions of the Contract for Construction.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 7.4 ~~The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

§ 7.4.1 ~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 7.5 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 7.6 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 7.7 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.8 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. ~~The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~ This Section 7.8 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 5.4.

§ 7.9 ~~If the Architect or Owner~~ receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 7.9.1. This Section 7.9 shall survive the termination of this Agreement.

§ 7.9.1 The ~~receiving party~~ Architect may disclose “confidential” or “business proprietary” information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 7.9.

§ 7.10 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B102™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204–2017 incorporated into this Agreement.)

☐ Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)

- .4 Other documents:
(List other documents, including the Architect’s scope of services document, hereby incorporated into the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)

ARCHITECT (Signature)

(Printed name, title, and license number, if required)



EXHIBIT A

SCOPE OF WORK

1 - Staffing Projection and Space Needs Study

Using data collection and analysis tools, Architect shall interview key staff and assess existing facilities to determine current and future space requirements.

2 -Base Site Plan

Based on the Space Needs Study, Architect shall develop alternate building footprints for use in studying alternate site configurations. Architect shall plan conceptually for needed parking, loading, vehicular access, pedestrian movement, and site accessibility.

3 - Site Selection

Based on the Base Site Plan, Architect shall develop a Site Criteria Rating Matrix, which will be used to score each potential site under consideration. Together with Town representatives, Architect shall identify and visit up to four sites in Wellington.

4 - Site Evaluations

Based on preliminary site selection by the Town, Architect shall assist in the evaluation of the property or properties. This effort may be part of the Town's Due Diligence process, if new land is put under contract. Architect shall evaluate the zoning, access, topography, utilities, drainage and other factors. The Town shall contract for a survey and geotechnical report at this stage.

5 -Facility Visits

Architect shall assist in identifying three similar facilities and accompany Town representatives on a tour of each. Architect shall summarize the information gathered at each location for comparison. In addition, the team shall review other municipal projects that might offer inspiration.

6 - Conceptual Design

Based on the Needs Assessment, site studies, and other data and examples, Architect shall develop a Space Program for the facility. Adjacency requirements for spaces and departments will be analyzed and diagrammed as part of the Program. Architect shall review alternate plan configurations with the Town and develop the best option into a Conceptual Floor Plan.

7 - Phasing Plan

The Team will assist the Town in considering and planning for the re-use or disposition of existing facilities. Potential phasing of department relocations shall be studied and coordinated with staff and department needs, as well as the conceptual facility design and likely construction schedule.

8 - Master Plan Graphics

Based on the selected site and the Conceptual Floor Plan, Architect shall develop the Final Concept Site and Floor Plans, as well as Concept Exterior Elevations and 3D Rendering. For the purpose of providing more detailed information for cost estimating, Architect shall write a Narrative of the development, addressing many of the proposed materials, assemblies, and building systems that are anticipated.

9 - Cost Estimating

The Infusion Team will work together to prepare a Concept Cost Estimate for the new development. This will include estimates for design fees, general conditions, and construction costs, along with contractor's overhead and profit. If available from the Town, Architect shall also include site acquisition and due diligence costs.

10 - Ongoing Building Operation Estimating

With input from the Town and its procurement personnel, and with research of local utility providers, Architect shall help to evaluate the likely utility and maintenance service costs, along with expected building maintenance and scheduled replacement costs.

11 - Final report

Architect shall review its proposed report format with the Town staff, to make sure we are providing the needed information in a useful and accessible manner. All programming forms, estimates, diagrams, plans and other drawings will be included.

12 - Public Process

Architect shall conduct up to four Workshops/Charettes with key staff and any other designated representatives or consultants of the Town of Wellington. Throughout this phase of the project, at least one member of the design team shall attend each Town Board meeting, during the 4 - 6 month process.



Board of Trustees Meeting

Date: February 11, 2020
Submitted By: Tyler Sexton, Finance Director
Subject: NPIC Lateral Improvements at BNSF Crossing Project

EXECUTIVE SUMMARY

BACKGROUND / DISCUSSION

STAFF RECOMMENDATION

ATTACHMENTS

1. Agenda Item NPIC Lateral Improvements at BNSF Crossing 02-04-19 (1)
2. Cost Breakout
3. CSU Project Budget
4. North Poudre Irrigation Company Lateral 04S Shareholder Agreement

Town Board Meeting

Agenda Item #__

Meeting Date: February 11, 2020

Submitted By: Tyler Sexton, Interim Finance Director

Agenda Category: Action Item

Subject: NPIC Lateral Improvements at BNSF Crossing Project

Background:

- The Town had entered into an agreement with the Mizushima property, Patterson property, Harrison property, Lane property, and CSU property for the maintenance of the North Poudre Ditch to the Kerbel Southbound Lateral. The agreement breaks out each property's shared cost depending on section and type of repair. This agreement was effective November 15, 2017.
- The repair in question is for the middle section and is defined as a major maintenance. Per the agreement the Town's portion is 11.30% of the total cost.
- Discussing with Gene Ellis, Utility Services Manager at CSU, he requested payment for items 3 & 4 on the cost breakout sheet totaling \$22,655.76. The remaining balance will be collected upon completion of the project.

Financial/Sustainability Considerations:

- The total estimated cost of the repair is \$327,265.91 and the Town's portion is \$34,784.66. The Town has appropriated funds for this project in the amount of \$34,000.00.

Legal Considerations:

- The agreement and cost estimate have been provided to legal counsel for review and comment.

Policy Considerations:

-

Recommend a Motion to:

- Receive and file
-

Attachments

Attachment 1 CSU Project Budget

Attachment 2 Cost Breakout

Attachment 3 North Poudre Irrigation Company Lateral 04S Shareholder Agreement

Kerbel Well BNSF Crossing

Cost Split between CSU and Town of Wellington

Date: 1/30/2020

CSU %	Wellington %
88.70%	11.30%

Total Project Costs				Labor/Equip Spread	Material Cost	Small Tools / Exp Materials	Unit Cost	Item Cost	CSU Cost	Wellington Cost	Comments/Notes
Item No.	Item Description	Quantity	UOM								
1	Administrative Costs	1					NA	\$ 46,140.00	\$ 40,926.18	\$ 5,213.82	
2	Design Costs	1					NA	\$ 27,405.00	\$ 24,308.24	\$ 3,096.77	
	Construction										
3	BT Construction Bore (bid)	74.0	LF				\$ 2,580.22	\$ 190,936.00	\$ 169,360.23	\$ 21,575.77	
4	BT Construction Change Order #1	74.0	LF				\$ 129.15	\$ 9,557.46	\$ 8,477.47	\$ 1,079.99	Bore change due to unlocated fiber line.
5	CSU Heavy Civil Labor	100.0	LF				\$ 324.40	\$ 32,440.00			
5a	CSU Heavy Civil Labor (All Customers)	62.7	LF					\$ 20,333.39	\$ 18,035.72	\$ 2,297.67	
5b	CSU Heavy Civil Labor (Kerbel Only)	37.3	LF					\$ 12,106.61	\$ 12,106.61	\$ -	
6	CSU Heavy Civil Material	100.0	LF				\$ 124.97	\$ 12,496.85			
6a	CSU Heavy Civil Material (All Customers)	62.7	LF					\$ 7,833.03	\$ 6,947.89	\$ 885.13	
6b	CSU Heavy Civil Material (Kerbel Only)	37.3	LF					\$ 4,663.82	\$ 4,663.82	\$ -	
7	Oldcastle manhole order	1.0	LOT				NA	\$ 8,290.60			
7a	Oldcastle manhole order (All Customers)	1.0	LOT					\$ 5,624.00	\$ 4,988.49	\$ 635.51	
7b	Oldcastle manhole order (Kerbel Only)	1.0	LOT					\$ 2,666.60	\$ 2,666.60	\$ -	
Totals								\$ 327,265.91	\$ 292,481.25	\$ 34,784.66	

Total Development Project Budget

#17-049 ARDEC Kerbel Irrigation Revitalization

1.24.20

Additional funding added to budget 1.18.19

Cost Category & Descriptions	\$	Estimate	Information
Adminstrative Costs			
Advertising	\$	1,500.00	
Moving Expenses	\$		NA
PM Fee	\$	13,200.00	updated 2.4.19 per SC (8% PM Fee Split between FM and Ditesco)
Ditesco PM Fee	\$	11,440.00	8% PM Fee Split between FM and Ditesco
Real Estate Services	\$	5,000.00	Brian Hood - BNSF Permitting
BNSF Permitting Fees (Jacked Bore)	\$		
Construction	\$	15,000.00	Estimate - 6 days at \$2500
Permanent Installation (Easement)	\$		
City of Fort Collins Fees (Permits, Discharge, etc)	\$		NA
City Plant Investment Fees (PIFs)	\$		NA
Boiler/Generator Exhaust Air Permit	\$		NA
Lost Parking Replacement Fee	\$		NA
LEED Certification	\$		NA
SubTotal	\$	46,140.00	

Design Costs			
Program Plan	\$		NA
A/E Design Services	\$	27,405.00	Ditesco A/E Agreement
City Review (SPAR)	\$		NA
CSU Internal Design Costs	\$		NA
Design Contingency	\$		
Cost Estimator	\$		Within Ditesco Fees
Traffic Study	\$		NA
Environmental Assessment (Phase I & II)	\$		NA
Drainage Study	\$		NA
Specialty Consultants	\$		NA
Commissioning Consultant	\$		NA
Vibration/Mechanical Consultant	\$		NA
Structural Consultant	\$		NA
LEED Consultant	\$		NA
Land/Site Survey	\$		Within Ditesco Fees
Geotechnical Investigation	\$		Within Ditesco Fees
Industrial Hygienist	\$		NA
Poudre Fire Authority Design Review Fee	\$		NA
Code Review	\$	0.00	Reduced from \$5,000; Will write code waiver
Code Inspections	\$	0.00	None
Roofing Inspector	\$		NA
SubTotal	\$	27,405.00	

Construction Costs			
Base Construction	\$	190,936.00	BT Proposal
	\$	9,557.46	BT CO #1 - Bore on west side due to unlocated fiber line
Alt 1 Labor	\$	32,440.00	CSU Heavy Civil Estimate 1.24.20 - Labor and Road Base/Trucking
Alt 1 Manholes	\$	8,290.60	OldCastle
Alt 1 Materials	\$	12,496.85	CSU Heavy Civil Estimate 1.24.20 - Materials
Construction Contingency-Contractor	\$		
Asbestos Abatement	\$		
Tree Removal	\$		
Demolition	\$		
Constr. Materials Testing & Special Inspections	\$	0.00	None
Utilities to the Project	\$		
City Traffic	\$		
City Light & Power	\$		
Century Link	\$		
Comcast	\$		
Xcel	\$		
CSU	\$		
University Needed Improvements	\$		
Construction Laydown & Staging Area	\$		
Stormwater Management	\$		
Keying/Cylinders	\$		
CSU Telecom	\$		
Security	\$		
Card Access	\$		
Cameras	\$		
Intrusion	\$		
Notifier Network (Fire Alarm) Connection	\$		
Fire Alarms (if not in base bid)	\$		
Signage/Branding	\$		
Safety Radio	\$		
Test	\$		
Installation	\$		
CSU HVAC Controls/BAS	\$		
SubTotal	\$	253,720.91	

Owner's Construction Contingency			
Construction Contingency	\$	0.00	Released after BT complete. CSU Heavy Equip Estimate includes contingency.
SubTotal	\$	0.00	

*Total Construction Cost	\$	253,720.91	*Owners Constr Contingency + Constr Costs
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Furniture, Fixtures & Equipment			
Furniture, Fixtures & Equipment	\$		
Design Consultant	\$		
Furniture	\$		
AV/Classroom Equipment	\$		
Kitchen Equipment	\$		
Custodial Equipment	\$		
Lab Equipment	\$		
Irrigation Equipment	\$		
Specialty Equipment	\$		
Site Furnishings	\$		Possibly replace pump, but will include in Construction SOW
SubTotal	\$	0.00	

Funds Available	\$	308,689.00	
Total Development Cost		327,265.91	**
Difference	\$	-18,576.91	

**AMENDED AND RESTATED
NORTH POUDE IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT**

This Amended and Restated North Poudre Irrigation Company Lateral 04S Shareholder Agreement ("Agreement") is executed effective as of November 15, 2017, by the undersigned ("Parties") who own stock in the North Poudre Irrigation Company ("North Poudre") and have an interest in the private lateral known as the North Poudre Irrigation Company Lateral 04S ("Lateral"). Except where explicitly stated herein, this Agreement is intended to replace that certain North Poudre Irrigation Company Lateral 04S Shareholder Agreement as recorded with the Larimer County Clerk and Recorder on June 12, 2007 at Reception #20070044092 ("Original Agreement").

RECITALS:

A. WHEREAS, The Lateral begins at the turn-out weir at the end of the North Poudre #4 South Ditch and terminates at a point when the last party to the Original Agreement (defined below) ceases to take delivery of water from the Lateral. A map of the Lateral and its features relevant to this Agreement is attached hereto as **Exhibit A** and incorporated by this reference.

B. WHEREAS, the following were the parties to the Original Agreement as recorded with the Larimer County Clerk and Recorder on June 12, 2007 at Reception #20070044092:

- i. Charles Mizushima and Margaret Mizushima;
- ii. James R. Bath and Michelle D. Bath;
- iii. Louis W. Harrison and Alice Harrison;
- iv. Earl C. Kerbel and Mary Kerbel;
- v. Meadow Village LLC;
- vi. Wellington Village Owners Association;
- vii. Town of Wellington

C. WHEREAS, it has since been determined that as of the date of this Agreement there are other and different parties that have an ownership/use interest in the Lateral and North Poudre Irrigation Company shares and, accordingly, the following parties are the proper parties (hereinafter the "Parties") to this Agreement:

- i. Charles Mizushima and Margaret E. Mizushima ("Mizushima")
Mailing Address: 2550 ECR 62E Wellington, CO 80549
Property Address: None (vacant property)

Property Served: Legally described on Exhibit A of Quit Claim Deed recorded on April 26, 1999 with the Clerk and Recorder of Larimer County at Reception #99035159 and known as Larimer County Assessor Parcel No. 88100-00-015 ("Mizushima Property").

Water Delivered in Lateral For Benefit of Mizushima Property: Water attributable to one (1) share of stock in the North Poudre Irrigation Company.

- ii. Steve Patterson and Amber Patterson ("Patterson")
Mailing Address: 4645 E County Road 60, Wellington CO 80549
Property Address: 4645 E County Road 60, Wellington CO 80549

Property Served: Legally described on Warranty Deed recorded October 8, 2012 with the clerk and Recorder of Larimer County Reception #20120070017 as "Lot 2, Bath Minor Land Division NO. 07-S2690, County of Larimer, State of Colorado," and known as Larimer County Assessor Parcel No. 88101-05-001 ("Patterson Property").

Water Delivered in Lateral For Benefit of Patterson Property: Water attributable to one (1) share of stock in the North Poudre Irrigation Company.

- iii. Louis W. Harrison and Alice C. Harrison ("Harrison")
Mailing Address: 6411 Fox Den Road Wellington, CO 80549
Property Address: None (vacant property)

Property Served: Legally described on Exhibit A of Warranty Deed recorded on June 3, 1996 with the Clerk and Recorder of Larimer County at Reception #96038812 and known as Larimer County Assessor Parcel No. 88100-00-014 ("Harrison Property").

Water Delivered in Lateral For Benefit of Harrison Property: Water attributable to one (1) share of stock in the North Poudre Irrigation Company.

- iv. Michele Lane and Stephen G. Lane ("Lane")
Mailing Address: 4349 E County Road 60, Wellington CO 80549
Property Address: 4237 E County Road 60 Thru, Wellington CO 80549

Property Served: Legally described on Schedule C of Warranty Deed recorded on August 17, 29915 at Reception #95050444 and known as Larimer County Assessor Parcel No. 88100-00-010 ("Lane Property").

Water Delivered in Lateral For Benefit of Lane Property: Water attributable to one (1) share of stock in the North Poudre Irrigation Company.

- v. The Board of Governors of the Colorado State University System, f/k/a Colorado State Board of Agriculture ("CSU")
Mailing Address: c/o CSU Real Estate Services
P.O. Box 483, Fort Collins, CO 80522

Property Address: None (vacant property)

Property Served: Legally described on Warranty Deed recorded on September 13, 2001 with the Clerk and Recorder of Larimer County at Reception #2001081670 as "Lot 1 Forever Farm M.L.D. No. 01-S1805, County of Larimer, State of Colorado," and known as Larimer County Assessor Parcel No. 88102-08-901 ("CSU Property").

Water Delivered in Lateral For Benefit of CSU Property: Water attributable to one (1) share of stock in the North Poudre Irrigation Company. Additionally, CSU owns fee title to that certain adjudicated water well known as the Kerbel Well, Permit No. 14722, adjudicated in Water Division I, Case No. W-726-77 located on the real property legally described on Special Warranty Deed recorded August 10, 2001 with the Clerk and Recorder of Larimer County at Reception Number 20010168326 ("CSU/Kerbel Well"). The CSU/Kerbel Well is adjudicated for 3.56 cubic feet per second with an appropriation date of May 22, 1956. CSU estimates that the Lateral delivers approximately up to 250 acre feet of water annually from the CSU/Kerbel Well to the CSU Property. Water diverted from the CSU/Kerbel Well is delivered through the Middle Portion (defined below) of the Lateral.

- vi. Town of Wellington ("Town")
Mailing Address: 3735 Cleveland Ave, PO Box 127, Wellington CO 80549
Property Address: 6172 NE Frontage Road, Wellington CO 80549

Property Served: The Ponds and Town park land as further described in the Original Agreement ("Town of Wellington Property").

Water Delivered in Lateral For Benefit of Town of Wellington Property: Water attributable to seven (7) shares of stock in the North Poudre Irrigation Company.

D. WHEREAS, the Mizushima Property, Patterson Property, Harrison Property, Lane Property, CSU Property and Town of Wellington Property are sometimes hereinafter referred to as the "Parties' Properties." The ownership/right to use the Lateral is appurtenant to the Parties' Properties.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

AGREEMENT:

1. Scope of Agreement. The foregoing Recitals of fact are true and correct and are incorporated herein by reference. Except as it concerns remaining agreements/understandings between the Town, Meadow Village LLC and/or the Wellington Village Owners Association, including in particular agreements concerning the use and maintenance of the "Diversion Pipe" in the Existing Agreement, this Agreement is intended to amend and replace the Existing Agreement in its entirety.

2. Representation of the Parties. The Parties assert that, to the best of their knowledge, they are the owners of the Lateral and no other party(ies) own or have a right to use the Lateral.

3. Lateral Sections. For purposes of this Agreement, the Parties divide the Lateral into three (3) distinct segments known as the West Section, the Middle Section, and the East Section as follows (and as depicted on the map attached hereto as Exhibit A):

a. That portion of the Lateral from the turn-out weir at the end of the North Poudre #4 South Ditch until the Lateral enters the Kerbel/CSU Water Well site (hereinafter the "West Section").

b. That portion of the Lateral commencing at the CSU/Kerbel Well to a point approximately fifty feet (50') east from where the Lateral daylights after crossing under I-25 at the location where the Lateral turns due east (hereinafter the "Middle Section").

c. That portion of the Lateral commencing at the end of the Middle Section to the point where that Lateral terminates ("East Section").

The West Section, the Middle Section and the East Section collectively comprise the Lateral and are sometimes each generally referred to herein as a "Section."

4. Parties Use of the Lateral. For purposes of determining the Parties' relative rights to the use the Lateral and the Parties' obligations to maintain the Lateral in this Agreement, the Parties agree that one (1) share of North Poudre represents five (5) acre feet of water per irrigation season—which corresponds to the approximate average annual yield of a North Poudre share. The Parties further agree that the CSU/Kerbel Well delivers an average of two hundred fifty (250) acre feet of water per irrigation season to the CSU Property through the Middle Section of the Lateral only. Accordingly, the Parties, on behalf of themselves, their heirs, successors and assigns, hereby agree, that for purposes of this Agreement their current respective proportional use of each Section of the Lateral is determined based upon the foregoing average annual amount of water each Party may divert in each Section of the Lateral as of the date of this Agreement is, as follows:

TABLE 1

<u>Owner</u>	<u>West Section Use</u> (Acre Feet)	<u>Middle Section Use</u> (Acre Feet)	<u>East Section Use</u> (Acre Feet)
Town	35	35	35
CSU	5	255	0
Mizushima	5	5	5
Patterson	5	5	5
Harrison	5	5	5
Lane	5	5	5
Total	Sixty (60) Acre Feet	Three Hundred Ten (310) Acre Feet	Fifty-Five (55) Acre Feet

These amounts correspond to the following percentages for each Party in each section of the Lateral.

TABLE 2

<u>Owner</u>	<u>West Section Use</u> (Acre Feet)	<u>Middle Section Use</u> (Acre Feet)	<u>East Section Use</u> (Acre Feet)
Town	58.35%	11.30%	63.64%
CSU	8.33%	82.26%	0
Mizushima	8.33%	1.61%	9.09%
Patterson	8.33%	1.61%	9.09%
Harrison	8.33%	1.61%	9.09%
Lane	8.33%	1.61%	9.09%
Total	100%	100%	100%

5. **Routine Maintenance.** Notwithstanding the Parties' respective Lateral use set forth in Table 1 above, provided no Party Materially Alters (defined below) its use of the Lateral, the Parties agree to allocate the cost of Routine Maintenance (defined below) of the several Lateral Sections as follows:

TABLE 3

	<u>West Section</u>	<u>Middle Section</u>	<u>East Section</u>
Town's Cost Share	55/60 th (91.67%)	55/310 th (17.74%)	35/55 th (63.64%)
CSU's Cost Share	5/60 th (8.33%)	255/310 th (82.26%)	0.00%
Mizushima's Cost Share	0.00%	0.00%	5/55 th (9.09%)
Patterson's Cost Share	0.00%	0.00%	5/55 th (9.09%)
Harrison's Cost Share	0.00%	0.00%	5/55 th (9.09%)
Lane's Cost Share	0.00%	0.00%	5/55 th (9.09%)

For purposes of this Agreement, "Routine Maintenance" shall consist of the regularly recurring general maintenance required to keep the Lateral Sections operating in good working order and specifically shall not include major expenditures, repair or replacement of ditch/pipelines in excess of \$3,000 per irrigation season in any one Section of the Lateral.

Invoices for Routine Maintenance will be sent out annually by no later than November 1 of each year.

6. Effect of a Material Alteration of Use of the Lateral

a. Definition of "Materially Alter." For purposes of this Agreement, a Party "Materially Alters" its use of the Lateral if/when that Party: (i) subdivides its property into three (3) or more parcels and provides water from the Lateral to more than one of the parcels; (ii) changes its use of water from irrigation to some other use, or adds other uses in addition to irrigation; or (iii) increases its proportionate use of any Section of the Lateral by 100% for three or more consecutive years. For the avoidance of doubt, a Party Materially Alters its use by 100% or more by increasing the amount of water run in any Section of the Lateral from 5 acre feet per year to 10 acre feet (or more) for three consecutive irrigation seasons. In the event any Party Materially Alters its use of the Lateral, that Party, or any other Party may, at their election, compel the Party that Materially Alters its use to either: (1) limit its future use to be consistent with Table 1; or (2) pay its proportionate costs of Routine Maintenance in the Middle Section and the East Section of the Lateral based upon that Party's actual proportionate use; for the avoidance of doubt, the proportionate share of Routine Maintenance will not change for the West Section.

b. Hypothetical Example. By way of example only, if Lane were to increase its use for three consecutive years to (15) acre feet (e.g. running of 3 North Poudre Shares) through the Lateral, Lane, or such other Party, may be compelled by the other Party(ies) to either: (1) limit future use to 1 North Poudre Share (approximately 5 acre feet annually); or (2) share in future maintenance for the Middle Section and the East Section of the Lateral based upon the use of 3 North Poudre Shares (15 acre feet) as set forth in Table 4 below. For the avoidance of doubt, the share of future maintenance increases for the Middle Section and East Section only, and there is no change in maintenance for the West Section, as follows:

**TABLE 4 – HYPOTHETICAL EXAMPLE
FOR LANE THREE SHARES**

	<u>West Section</u>	<u>Middle Section</u>	<u>East Section</u>
Town's Cost Share	55/60 th (91.67%)	50/320 th (15.62%)	35/65 th (53.85%)
CSU's Cost Share	5/60 th (8.33%)	255/320 th (79.69%)	0.00%
Lane's Cost Share	0.00%	15/320 th (4.69%)	15/65 th (23.08%)
Mizushima's Cost Share	0.00%	0.00%	5/65 th (7.69%)
Patterson's Cost Share	0.00%	0.00%	5/65 th (7.69%)
Harrison's Cost Share	0.00%	0.00%	5/65 th (7.69%)

c. Material Alteration of use of Middle Section by CSU and/or Town of Wellington. Additionally, CSU and the Town of Wellington may Materially Alter their use in the Middle Section of the Lateral only, if either Party reduces its water deliveries by 100% (or more) by reducing the amount of water run in the Middle Section for three consecutive years (e.g. CSU reduces its use from 255 acre feet to less than 127 acre feet for three consecutive years

or the Town reduces its use from 7 North Poudre Shares (35 acre feet) to 3.5 shares or less (17.5 acre feet or less)). In such event, the Town of Wellington and CSU shall meet and agree on a cost share commensurate with CSU and the Town's relative use of the Middle Section. For the avoidance of doubt, CSU and the Town of Wellington agree to share Routine Maintenance of the Middle Section with reference to the number of acre feet of water deliveries, in contrast to the number of North Poudre shares owned, since CSU predominately delivers well water through the Lateral and, thus, allocation based on the number of shares owned is not meaningful.

7. Responsibility for Performance of Routine Maintenance. All decisions concerning the Routine Maintenance in each Section of the Lateral shall be made by the Party paying the majority of the costs of such maintenance in each Section. If the Party with primary responsibility for Routine Maintenance of any Section of the Lateral fails to maintain that Section in good working order, any other Party may seek to compel that Party with primary responsibility to maintain the Section or, after giving at least seven (7) days' notice to the responsible Party, proceed with reasonable Routine Maintenance and recover from the other responsible Party for the costs incurred (less that Party's own share of the costs). The Parties will pay their respective pro rata share of all maintenance expense within thirty (30) days of receipt of an itemized report of the total costs incurred by either party performing Routine Maintenance.

The foregoing notwithstanding, the Parties agree that any Party running water on the Lateral is responsible to remove debris from the trash racks, monitor water delivery and promptly notify the Party paying the majority of the costs of such maintenance in the applicable Section of any discovered maintenance issue. Further, the Parties acknowledge that the trash rack at the point on the Lateral where it flumes under Box Elder Creek routinely clogs and often overtops (either due to clogging or East Section Parties seeking to run water in excess of the flume's capacity). This overtopping can cause flooding on the CSU Property which can cause damage and interfere with research projects. In the event such overtopping is observed by CSU staff and is potentially damaging to CSU Property, crops or projects thereon, CSU may clear the debris and take any other reasonable corrective action needed if immediate action is warranted. Otherwise, CSU shall contact the Town on behalf of the East Section Parties to advise of the situation and discuss how to remedy the problem. In the event the overtopping is not corrected within twenty-four (24) hours from the time of such notice, CSU may take corrective action and bill the East Section Parties for the cost of such corrective action. The East Section Parties shall promptly reimburse CSU for the cost of the corrective action.

8. Major Maintenance. All maintenance, repair or replacement that is not Routine Maintenance, as defined above shall be considered major maintenance ("Major Maintenance").

a. West Section Major Maintenance. The Parties agree that the Town of Wellington shall pay all costs for Major Maintenance in the West Section, including without limitation the repair and replacement of buried pipe.

b. Middle Section Major Maintenance. In the event Major Maintenance is required in the Middle Section, the Parties shall meet to determine how to best accomplish the Major Maintenance that is required and to determine if and/or to what extent the Parties wish to continue to use the Middle Section and, based upon this information, revise and update Table 1 and Table 2 above. The Parties shall pay the costs of the Major Maintenance in the Middle

Section based upon the revised Table 2 percentages and, thereafter, all Parties' use of the Middle Section of the Lateral shall be limited to their proportionate interest, unless the Parties agree otherwise. In the event that any Party determines that it no longer intends to use the Middle Section, that Party shall notify the other Parties to this Agreement and that party shall be deemed to have abandoned its interest in the Lateral (which abandonment is not a relinquishment or an abandonment of such Party's water right or stock in North Poudre) and shall no longer run any water in the Lateral. For the avoidance of doubt, a Party that elects to abandon its interest in the Lateral retains such Party's water right or stock in North Poudre. If a Party does not abandon its interest in the Lateral but still refuses to pay its proportionate cost of any Major Maintenance of the Middle Section within thirty (30) days of written demand, such Party's right to use the Lateral is immediately suspended for non-payment under Section 9 below.

c. East Section Major Maintenance. The cost and expense of Major Maintenance in the East Section shall be determined by the Parties that deliver water in the East Section--Town, Mizushima, Patterson, Harrison, and Lane, and their heirs, successors and assigns, hereinafter referred to as the "East Section Parties."

9. Effect of Non-Payment. In the event that any Party or Parties fail to pay the costs or fees owed by such Party or Parties under this Agreement within thirty (30) days, that Party or Parties right to use the Lateral is immediately suspended until such Party reimburses in full its proportionate cost together with interest at a rate of eight percent (8%) per annum.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties hereto, and their heirs, successors and assigns, and shall run with and be binding upon the Lateral Owners' Properties.

11. Counterparts; Authority to Bind. This Agreement may be executed in two or more counterparts, each of which (when bearing the signature of all parties), shall constitute one and the same document. Each of the parties executing this Agreement represents and warrants to the other that they have full authority to execute this Agreement without the consent of any third party.

12. Notices. All notices, demands, or other written communication required or permitted to be given by this Agreement shall be hand delivered, overnight courier with proof of delivery, or sent by certified mail, postage prepaid, and return receipt requested, to the parties as follows:

- a. Charles Mizushima and Margaret E. Mizushima
2550 ECR 62E
Wellington, CO 80549
cmizushima@q.com
- b. Steve Patterson and Amber Patterson
4645 E County Road 60
Wellington CO 80549
steve.patterson98@hotmail.com

- c. Louis W. Harrison and Alice C. Harrison
6411 Fox Den Road
Wellington, CO 80549
bill_1939@hotmail.com
 - d. Michele Lane and Stephen G. Lane
4349 E County Road 60
Wellington CO 80549
slane78004@msn.com
 - e. The Board of Governors of the Colorado State University System
f/k/a Colorado State Board of Agriculture
c/o CSU Real Estate Services
P.O. Box 483
Fort Collins, CO 80522
- with copies to:
Office of the General Counsel
Colorado State University System
01 Administration Building
0006 Campus Delivery
Fort Collins, CO 80523
- f. Town of Wellington
3735 Cleveland Avenue
PO Box 127
Wellington CO 80549

13. Effect on Existing Agreement. Except as it concerns remaining agreements/ understandings between the Town, Meadow Village LLC and/or the Wellington Village Owners Association, including in particular agreements concerning the use and maintenance of the "Diversion Pipe" in the Existing Agreement, this Agreement is intended to amend and replace the Existing Agreement in its entirety, and this Agreement contains the entire agreement of the Parties.

14. Amendments. Any amendments to this Agreement must be in writing and executed by all Parties to be valid and binding.

15. Effect of Invalidity. If any provision of this Agreement is invalidated by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

16. Binding Effect. This Agreement, when executed and delivered, shall bind the Parties and their successors, heirs and assigns.

17. Third Party Beneficiaries. Except as set forth herein, no persons or entities not a party to this Agreement are intended to benefit by the covenants, agreements, representations, warranties, or any other terms or conditions of this Agreement.

18. Governing Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The forum for any dispute regarding this Agreement shall be in the Larimer County District Court, State of Colorado.

19. Recordation. This Agreement, when fully executed, shall be recorded by the Town at the Town's expense with the Larimer County Clerk and Recorder.

Effective upon the last date signed below.

[Signatures on Following Pages]

SIGNATURE PAGE

TO

AMENDED AND RESTATED
NORTH POUDRE IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT

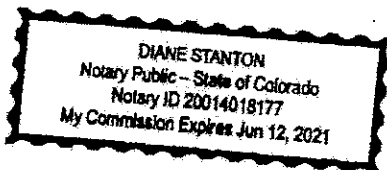
("Mizushima Property")

By: *Charles Mizushima*
Charles Mizushima

By: *Margaret E Mizushima*
Margaret E. Mizushima

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 25 day of October, 2017,
by Charles Mizushima.

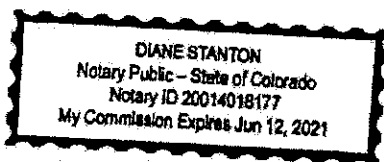


Diane Stanton
Notary Public
My commission expires: 06-12-2021

(Notarial Seal)

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 25 day of October, 2017,
by Margaret E. Mizushima.



Diane Stanton
Notary Public
My commission expires: 06-12-2021

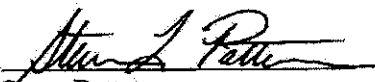
(Notarial Seal)

SIGNATURE PAGE

TO

AMENDED AND RESTATED
NORTH POUDRE IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT

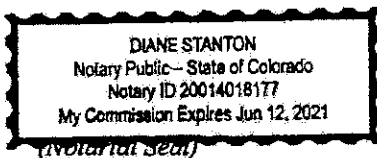
("Patterson Property")

By: 
Steve Patterson

By: 
Amber Patterson

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

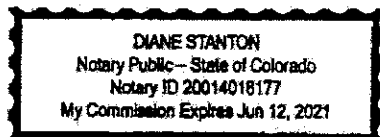
The foregoing instrument was acknowledged before me this 2 day of November, 2017,
by Steve Patterson.




Notary Public
My commission expires: 06-12-2021

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 20 day of October, 2017,
by Amber Patterson.




Notary Public
My commission expires: 06-12-2021

(Notarial Seal)

SIGNATURE PAGE

TO

AMENDED AND RESTATED
NORTH POUDRE IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT

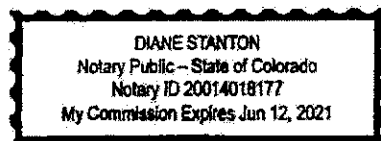
("Harrison Property")

By: Louis W. Harrison
Louis W. Harrison

By: Alice C. Harrison
Alice C. Harrison

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

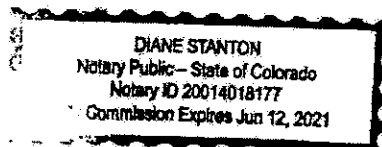
The foregoing instrument was acknowledged before me this 26 day of October, 2017,
by Louis W. Harrison.



Diane Stanton
Notary Public
My commission expires: 06-12-2021

(Notarial Seal)
STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 26 day of October, 2017,
by Alice C. Harrison.



Diane Stanton
Notary Public
My commission expires: 06-12-2021

(Notarial Seal)

SIGNATURE PAGE

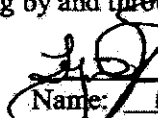
TO

AMENDED AND RESTATED
NORTH POUDRE IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT

("CSU Property")

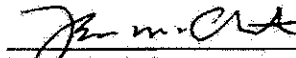
The Board of Governors of the Colorado State University
System, f/k/a Colorado State Board of Agriculture,
acting by and through Colorado State University

By:


Name: LYNN JOHNSON
Its: VICE PRESIDENT FOR
UNIVERSITY OPERATIONS

APPROVED AS TO FORM:
Office of the General Counsel

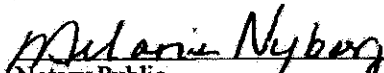
By:


Jean M. Christman
Senior Associate Legal Counsel
Colorado State University System

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

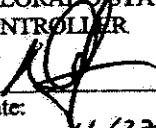
The foregoing instrument was acknowledged before me this 22nd day of NOV, 2017,
by Lynn Johnson as VP for Operations for the Board of Governors of the
Colorado State University System

MELANIE NYBORG
Notary Public
State of Colorado
Notary ID # 19974006741
My Commission Expires 05-19-2021
(Notarial Seal)


Notary Public
My commission expires: 5-19-21

ALL CONTRACTS REQUIRE
APPROVAL BY THE COLORADO
STATE UNIVERSITY CONTROLLER:
C.R.S. Section 24-30-202 and University
Policy require the Colorado State University
Controller to approve all State Contracts.
This Contract is not valid until signed and
dated below by the University Controller or
delegate.

COLORADO STATE UNIVERSITY
CONTROLLER

By: 

Date: 11/27/17

SIGNATURE PAGE

TO

AMENDED AND RESTATED
NORTH POUDRE IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT

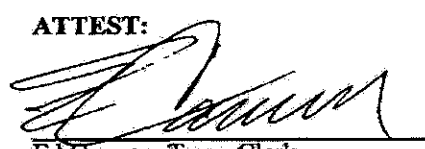
("Town of Wellington Property")

TOWN OF WELLINGTON, COLORADO

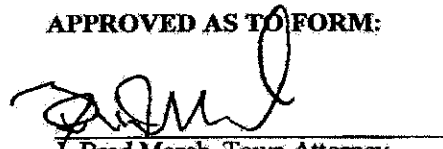
By:


Tim Singewald, Mayor

ATTEST:


Ed Cannon, Town Clerk

APPROVED AS TO FORM:


J. Brad March, Town Attorney

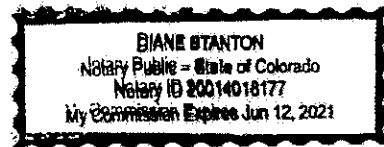
STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 15 day of NOVEMBER 2017,
by Tim Singewald as Mayor of the Town of Wellington, Colorado.

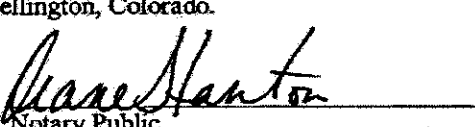

Notary Public
My commission expires: 06-12-2021

(Notarial Seal)

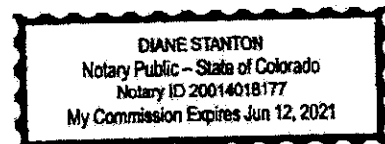
STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)



The foregoing instrument was acknowledged before me this 15 day of NOVEMBER 2017,
by Ed Cannon as Town Clerk of the Town of Wellington, Colorado.


Notary Public
My commission expires: 06-12-2021

(Notarial Seal)



SIGNATURE PAGE

TO

AMENDED AND RESTATED
NORTH POUDRE IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT

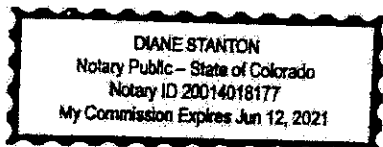
("Lane Property")

By: Michele Lane
Michele Lane

By: Stephen G. Lane
Stephen G. Lane

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

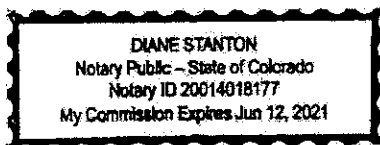
The foregoing instrument was acknowledged before me this 26 day of October, 2017,
by Michele Lane.



Diane Stanton
Notary Public
My commission expires: 06-12-2021

(Notarial Seal)
STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

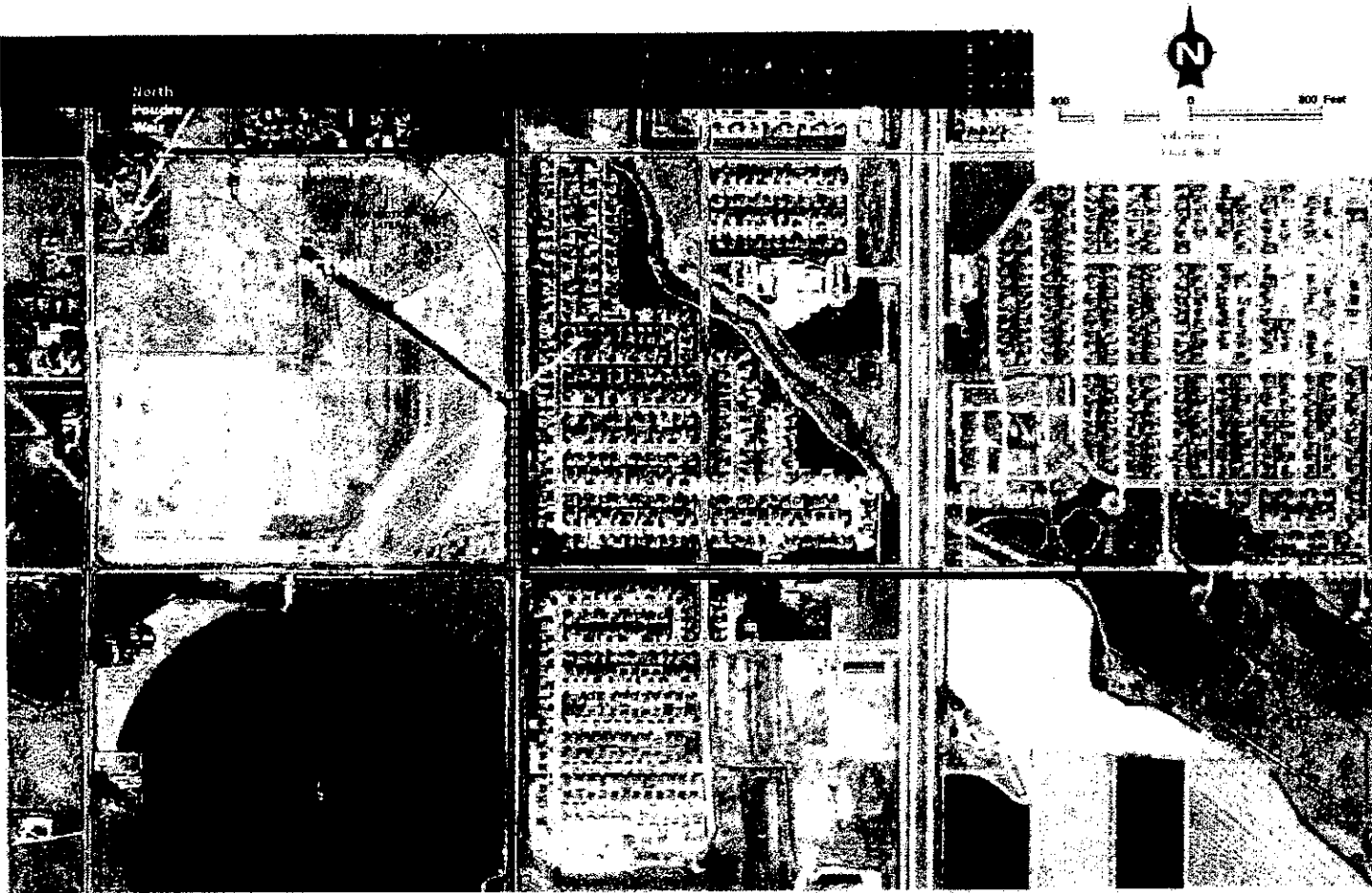
The foregoing instrument was acknowledged before me this 26 day of October, 2017,
by Stephen G. Lane.



Diane Stanton
Notary Public
My commission expires: 06-12-2021

(Notarial Seal)

EXHIBIT A



N **NORTHERN**
ENGINEERING

Wellington, CO
FIGURE 2
Map Information Exhibit

19

STATE OF COLORADO)

)ss.

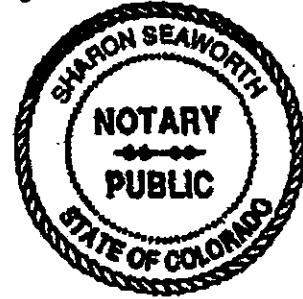
COUNTY OF LARIMER

The signature of Earl C. Kerbel and Mary Kerbel on the foregoing Agreement were
acknowledged before me this 25th day of May, 2007.

Witness my hand and official seal.

My commission expires 11/20/08

Sharon Seaworth
Notary Public



STATE OF COLORADO)

) ss.

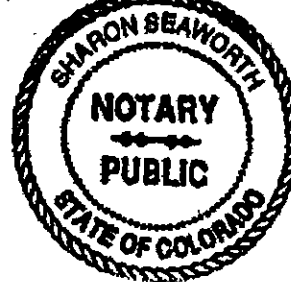
COUNTY OF LARIMER)

The signatures of Charles Mizushima and Margaret E. Mizushima on the foregoing Agreement were acknowledged before me this 23rd day of May, 2007.

Witness my hand and official seal.

My commission expires: 11/20/08

Sharon Seaworth
Notary Public



STATE OF COLORADO)

) ss.

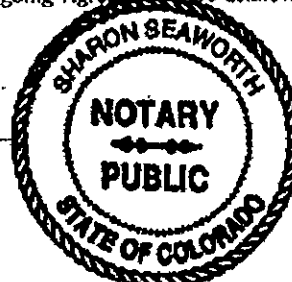
COUNTY OF LARIMER)

The signatures of James R. Bath and Michelle D. Bath on the foregoing Agreement were acknowledged before me this 29th day of May, 2007.

Witness my hand and official seal.

My commission expires: 11/20/08

Sharon Seaworth
Notary Public



STATE OF COLORADO)

) ss.

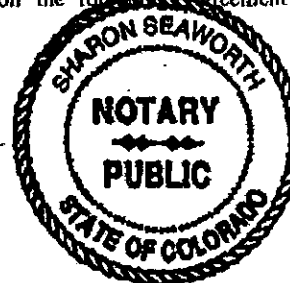
COUNTY OF LARIMER)

The signatures of Louis W. Harrison and Alice C. Harrison on the foregoing Agreement were acknowledged before me this 24th day of May, 2007.

Witness my hand and official seal.

My commission expires: 11/20/08

Sharon Seaworth
Notary Public



STATE OF COLORADO)

) ss.

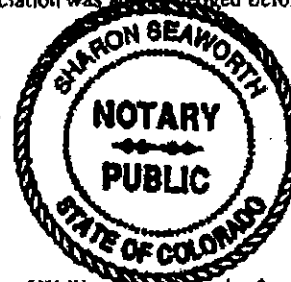
COUNTY OF LARIMER)

The signature of Chuck F. Rehmer as _____ of Meadow Village LLC and _____ of Wellington Village Owners Association was acknowledged before me this 23rd day of May, 2007.

Witness my hand and official seal.

My commission expires: 11/20/08

Sharon Seaworth
Notary Public



STATE OF COLORADO)

) ss.

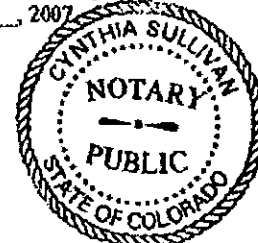
COUNTY OF LARIMER)

The signature of Larry Lorentzen as Town Administrator for the Town of Wellington, CO on the foregoing Agreement were acknowledged before me this 1 day of June, 2007.

Witness my hand and official seal.

My commission expires: 9-25-2010

Cynthia Sullivan
Notary Public



12. For the purposes of all shareholder communications, MV will have an on-site manager or other designated party for the purposes of placing water calls, supervising pond filling, and notification of any ditch maintenance or usage issues.

13. The physical improvements and work required of MV shall be completed prior to the 2008 irrigation season. MV shall pay the sums required in paragraph 6 directly to the contractor for any advance deposit and balance due upon completion and acceptance of work by the Lateral Owners.

14. The Town shall have no obligation hereunder unless the Town assumes all or part of that Owner's obligations, including assumption of the rights or obligations of the Developer or the Association. The Town shall have no obligation to perform any maintenance on any property dedicated or conveyed but may require MV to convey or dedicate any rights it may have in the Lateral to the Town, no such dedication or conveyance shall relieve MV of the obligation to pay assessments or provide its prorata share of the cost of maintenance.

15. MV shall be obligated to insure that adequate water is delivered to the Ponds at reasonable times to insure that the Ponds remain reasonably full for both aesthetic and irrigation purposes, subject to North Poudre delivery availability. If the Town determines that MV has failed to perform its obligations under this paragraph the Town may, without requiring a dedication or conveyance of the rights in the Lateral and without assuming MV's obligations hereunder, after giving the Association - fifteen (15) calendar days prior written notice, exercise MV's rights in the operation of the Lateral and may assess MV with any costs incurred by the Town associated with the exercise of such rights.

16. Subject to paragraph 14, this agreement shall be binding on and inure to the benefit of the Lateral Owners and the Town including the current Lateral Owners and their heirs, successors and assigns of the Lateral Owners' Properties and the shall run with and be binding upon the Lateral Owners' Properties. This agreement shall be recorded in the records of the Clerk and Recorder of Larimer County, Colorado.

Meadow Village LLC

Wellington Village Owners Association

By: [Signature] 5/25/07
Date

By: [Signature] 5/25/07
Date

[Signature] 5/23/07
Charles Mizushima Date

[Signature] 5/23/07
Margaret E. Mizushima Date

[Signature] 5-29-07
James R. Bath Date

[Signature] 5/29-07
Michelle D. Bath Date

[Signature] 5/29/07
Louis W. Harrison Date

[Signature]
Alice C. Harrison Date

[Signature] 5-25-07
Earl C. Kerbel Date

[Signature] 5/25/07
Mary Kerbel Date

Town of Wellington

By: [Signature]
[Signature]

5. All calls on the North Poudre ditch shall be subject to notification of North Poudre for customary delivery and measurement purposes. All of the parties hereby designate North Poudre as their agent for the purposes of measuring water delivery at the entry point of the Lateral, and for scheduling delivery including deliveries in the historic fashion to the Existing Users.

6. In consideration of this agreement, the Existing Users agree to combine MV ditch calls consisting of less than the 100" minimum, with their calls, and to divert said calls at the MV diversion structure to fill the ponds. So long as practicable, any such calls on the Ditch shall be measured by a metering device at (i) the Service Road V-ditch "Y" at the CSU/Kerbel Southbound Lateral, and (ii) at the exit side of the MV diversion structure. Both devices shall be installed at the sole expense of MV. If it is necessary to divert excess water owned by the Town which can not be used by the Town or in conjunction with the Project, or the Parks, said excess water may be used by the historic ditch holder that is assisting in the water delivery.

7. In consideration of past maintenance and improvements by the Existing Users, MV shall repair or replace the damaged concrete ditch East of I-25 to a level deemed as having a minimum 5 year life. These repairs consist of approximately 500 lineal feet of cracked or shifted V-ditch, MV's obligation to make such repairs shall not exceed \$10,000 in total cost and shall be installed and paid for prior to the 2008 irrigation season.

8. In consideration of past maintenance of the upper portion of Lateral by the Existing Shareholders, MV shall be solely responsible for annual maintenance of the upper lateral for a period 5 years, expiring on September 1, 2012 (the CSU/Kerbel Southbound Lateral) (MV's Maintenance Period"). The maintenance obligation shall include maintenance historically carried on by the Existing Users but the extent of MV's obligation hereunder shall not exceed \$3,000 per year. If costs during any year during MV's Maintenance Period exceed \$3,000 the costs shall be borne proportionate to each party's ownership in the Lateral. After the initial 5 year period and or a period extending thorough September 1, 2017, MV shall be obligated for 50% of all maintenance and the Parties, or the heirs, successors or assigns in each Party's property, shall pay the balance of their pro-rata share (20% each) of the cost of maintenance. Following September 1, 2017, the Parties, or the heirs, successors or assigns in each Party's property, shall pay their pro-rata share of the cost of maintenance.

9. Necessary maintenance and other matters associated with the Lateral shall be determined by a vote of the Parties, or the heirs, successors or assigns in each Party's property, who are the owners of the Lateral and shall be determined based on the pro-rata ownership interests.

10. If MV or, following the expiration of MV's Maintenance Period, if any party fails to pay its pro-rata share of any maintenance obligation any other party to this agreement, the Town or North Poudre or any party to this agreement may pay the defaulting party's maintenance obligation and the defaulting Party or the Party's heirs, successors or assigns in that Party's property, shall be personally liable for such obligation and the payor shall have a lien enforceable against the defaulting Party's property. Any defaulting maintenance obligation shall bear interest at the rate of twelve percent (12%) per annum and any party collecting such obligation shall be entitled to its reasonable attorney's fees incurred in collecting such default.

11. For purposes of this agreement the pro-rata cost of any maintenance shall include the share of any costs associated with conveying the water from the North Poudre Ditch to the CSU/Kerbel Southbound Lateral.

Ditch") to the Ponds. The Project Stock shall be solely used for the purposes herein and shall be held in perpetual safekeeping by The Town on behalf of the project and the Wellington Village Owners Association.

6. The Developer installed a diversion structure in the Lateral which will allow water to be delivered to the Ponds through a siphon to a pipe extending underneath GW Bush Drive (the diversion structure and the pipe are referred to as the "Diversion Pipe").
7. The Developer has agreed that all maintenance obligations arising from the use of the Lateral and associated with the Diversion Pipe shall be borne by the Developer or the Wellington Village Owners Association, a Colorado Non-Profit Corporation formed on September 8, 2005, for the purpose of managing obligations associated with the Property and the improvements to be constructed on the Property (the "Association").
8. The Existing Users have asserted and warrant that they are the sole owners of the right to use the Lateral.
9. Both the Developer and the Town have threatened to condemn the right to use the Lateral to deliver water including the water supplied by the Project Stock.
10. The Parties have entered into this agreement under threat of condemnation to afford the Developer, the Association and the Town the right to use the Lateral and to avoid the necessity of litigation or a condemnation action.
11. The Developer and the Association together are sometimes referred to jointly in this agreement as "MV" and any obligations referenced as being imposed on MV shall be the joint and several obligations of the Developer and the Association.

AGREEMENT:

1. The Existing Users hereby bargain, sell and convey to the Town and the Association by, and subject to, this agreement an undivided one-fifth ownership interest in the Lateral and the right to utilize the Lateral. The Parties, or their heirs, successors or assigns in each Party's property shall each be treated as owning one-fifth / twenty percent (20%) of the Lateral and shall have a right to vote one fifth of any rights associated with the ownership interest. MV, Mizushima, Harrison, Bath and Kerbel and the successor owners of the Project and the Mizushima, Harrison, Bath and Kerbel Properties and any successor interest owner of any of the Project or the Mizushima, Harrison, Bath or Kerbel Properties are referred to as the Lateral Owners.
2. MV, the Association and the Town shall have the right to utilize, improve and maintain the Diversion Pipe in the Lateral and to fill the Ponds from the Lateral using the Diversion Pipe which the Developer has constructed, as such Diversion Pipe may exist now or in the future.
3. It shall be the burden of MV to provide engineering verification of ditch capacity and to demonstrate that said capacity can support the historic use of the existing users and the added use necessary for filling the Ponds to the levels determined necessary to irrigate the Project.
4. Installation of all permanent improvements necessary to accommodate the filling of the Ponds and the future maintenance costs shall be the obligation of MV.

**NORTH Poudre IRRIGATION COMPANY
LATERAL 04S SHAREHOLDER AGREEMENT**

The undersigned (the "Parties"), own or have owned stock in the North Poudre Irrigation Company ("North Poudre") and wish to utilize the 04S Lateral off the North Poudre Irrigation System - for the purpose of delivery of water to properties wishing to receive North Poudre water deliveries. The Parties enter into this agreement for the purpose of allowing for use of the 04S lateral (the "Lateral") and agree as follows::

RECITALS:

1. The following parties were North Poudre shareholders of record (the "Existing Users") owning properties served by the Lateral. The Existing Users assert and warrant to MV and the Town that they had the sole right to utilize the Lateral prior to the parties entering into this agreement

Existing Users

Charles Mizushima and Margaret E. Mizushima;
2550 ECR 62E Wellington, CO 80549 1 Share ("Mizushima") Property served: as legally described at Larimer County Reception #99035159 (the "Mizushima Property")

James R. Bath and Michelle D. Bath;
4645 ECR 60 Wellington, CO 80549 1 Share ("Bath") Property served: as legally described at Larimer County Reception #2006-0019683 (the "Bath Property")

Louis W. Harrison and Alice C. Harrison;
6411 Fox Den Road Wellington, CO 80549 1 Share ("Harrison") Property served: as legally described at Larimer County Reception #96038812 (the Harrison Property)

Earl C. Kerbel and Mary Kerbel;
43489 ECR 60 Wellington, CO 80549 1 Share ("Kerbel") Property served: as legally described at Larimer County Reception #87025983 (the "Kerbel Property").

The Mizushima Property, Bath Property, Harrison Property and Kerbel Property are sometimes hereinafter referred to as the Existing Users' Properties. The rights to use the Lateral are appurtenant to the Existing Users' Property.

2. Meadow Village LLC (the "Developer") owns property (the "Project") within the Town of Wellington, Colorado (the "Town") and has entered into agreements with the Town for the development of the Project (the "Development Agreement").
3. By the Development Agreement and prior agreements entered into by the Town and the prior owner of the Project, the Developer is obligated to develop certain park improvements (the "Park") related to the Project and to convey or dedicate those improvements to the Town.
4. Included within the improvements which the Developer is obligated to install are certain ponds (the "Ponds") necessary to irrigate landscaping within the Park and the Project and to provide water to fill the Ponds.
5. To meet the requirement to fill the Ponds the Developer agreed to and did transfer to the Town, 4 shares of stock (the "Project Stock") in the North Poudre Irrigation Company and agreed to insure that the water represented by the Project Stock could be delivered from the ditch feeding the Lateral (the "North Poudre

✓ RETURN TO CHUCK REHMER, The Group, Inc., 7785 Highland Meadows Parkway,
Windsor, CO 80528
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