



TOWN OF WIGGINS

**BOARD of TRUSTEES
SPECIAL MEETING**

June 15, 2022 at 6:30 P.M.

**304 CENTRAL AVENUE
WIGGINS, CO 80654**

***NOTE: THE PUBLIC IS HIGHLY ENCOURAGED TO ATTEND THE MEETING VIA
ZOOM OR WATCH ON YOUTUBE DUE TO LIMITED SEATING CAPACITY***

GO TO THE FOLLOWING SITE <https://us06web.zoom.us/j/86743664102> FOR THE MEETING LINK

SPECIAL MEETING AGENDA

I. INTRODUCTIONS

1. Call the Meeting to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda

II. PUBLIC HEARING (*Public input will be taken during the public hearing*).

1. Consideration of Resolution No. 17-2022

A Resolution Amending the 2021 Budget by Increasing the Appropriations in the General Fund

2. Resolution No.17-2022

III. CONSIDERATION OF ORDINANCE NO. 09-2022

An Emergency Ordinance Approving a Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins for the Purpose of Leasing Augmentation Water

1. Ordinance No. 09-2022

IV. CONSIDERATION OF RESOLUTION NO. 18-2022

A Resolution Authorizing the town Manager to Purchase Fireworks for the Fourth of July Celebration from Tri-State Fireworks

1. Resolution No. 18-2022

V. CIRSA ELECTED OFFICIALS PRESENTATION

Tami Tanoue, CIRSA Executive Director

1. Ethics, Liability, and Best Practices Presentation

VI. ADJOURNMENT

1. Closing Remarks by Mayor and Adjournment of Meeting



STAFF SUMMARY

Board of Trustees Meeting

June 15, 2022

DATE: June 10, 2022

AGENDA ITEM NUMBER: 2

TOPIC: 2021 Budget Amendment Public Hearing

STAFF MEMBER RESPONSIBLE: Tom Acre, Town Manager

BACKGROUND:

The Town has recently commissioned an independent audit of the Town's finances and the auditor has recommended a budget amendment to the General Fund within the 2021 Budget reflecting actual expenditures. At the May 25, 2022 Board of Trustees meeting, an amendment to the budget was approved increasing the appropriation by \$50,000. This amount was originally communicated as the audit was being performed in April.

SUMMARY:

Based on the final results of the audit, the need exists to appropriate an additional \$ 25,000 in the General Fund. The increase is due to actual expenditures that were accounted for in budget year 2021 were slightly above what was estimated in April. The Board will recall that revenue and expenses for the budget for 2021 were estimated very cautiously due to Covid-19. As we came out of the pandemic some expenses were incurred above the estimate.

FISCAL IMPACT:

Appropriation of these funds reflects the actual expenses within the General Fund.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

Amending the budget by appropriating unanticipated expenditures provides transparency in budgeting to the citizens.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES:

The Board of Trustees could adopt this Resolution as presented, request a modification, or not adopt the Resolution.

MOTION FOR APPROVAL:

I make a motion to adopt Resolution No. 17-2022 – A Resolution Amending the 2021 Budget by Increasing the Appropriations in the General Fund.

ACTION REQUESTED:

MOTION, SECOND, ROLL-CALL VOTE

(Resolutions require affirmative votes from the majority of Trustees present)

**TOWN OF WIGGINS, COLORADO
RESOLUTION NO. 17-2022**

**A RESOLUTION AMENDING THE 2021 BUDGET BY INCREASING THE APPROPRIATIONS
IN THE GENERAL FUND**

WHEREAS, the Board of Trustees of the Town of Wiggins on December 9, 2020 adopted a budget for the 2021 calendar year per Resolution 44-2020, pursuant to and in accordance with the Local Government Budget Law; and

WHEREAS, the Board of Trustees approved expenses that were anticipated during the 2021 calendar year; and

WHEREAS, the Board of Trustees adopted Resolution 13-2022 on May 25, 2022, which amended the 2021 Budget by appropriating an additional \$50,000; and

WHEREAS, the Town has recently received the draft of the 2021 independent audit of the Town's finances and the auditor has recommended a total budget amendment for the General Fund of \$75,000 reflecting actual expenditures; and

WHEREAS, based on the foregoing, a need exists to appropriate additional sums of money in the General Fund; and

WHEREAS, the Board of Trustees has published notice of and held a hearing upon the supplemental appropriations and amendments to the 2021 budget authorized by this Resolution; and

WHEREAS, the amended 2021 budget, as revised by this Resolution, does not result in a deficit as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO:

Section 1. That the 2021 General Fund Budget is amended to reflect an additional appropriation of \$25,000.

Section 2. The foregoing appropriations are effective as of the date of this Resolution.

INTRODUCED, READ AND ADOPTED THIS 15th DAY OF JUNE 2022.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

Attest:

Deborah Lee, Town Clerk



STAFF SUMMARY

Board of Trustees Meeting

June 15, 2022

DATE: June 10, 2022

AGENDA ITEM NUMBER: 3

TOPIC: Approving a Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins for the Purpose of Leasing Augmentation Water

STAFF MEMBER RESPONSIBLE: Tom Acre, Town Manager

BACKGROUND:

The Town of Wiggins has been leasing excess recharge credits from the Town of Castle Rock for augmentation of our pumping depletions since we first entered into a lease agreement on January 5, 2016. The initial lease term was for three years and allowed for the use of 180 acre-feet in 2016, increasing to 300 acre-feet in the second and third years.

On March 8, 2017, the Town of Wiggins and the Town of Castle Rock amended the lease to extend the term of the lease to June 30, 2022 and increased the amount recharge credits to 600 acre-feet per year.

SUMMARY:

The lease agreement being considered allows for the Town of Wiggins to lease 325.4 acre-feet in the first year (July 2022-June 2023) and 600 acre-feet in the second year of the lease. The cost of leased water is \$125 per acre-foot and will provide recharge credits for our well pumping depletions in the South Platte River Aquifer alluvium as a part of our augmentation plan in addition the recharge credits accounted for through the Kammerer Recharge ponds.

FISCAL IMPACT:

The impact to the Water Enterprise budget is \$40,675 in year one and \$75,000 in the second year or \$125 per acre-feet.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

The Town of Wiggins strives to provide adequate and quality water for its citizens. Having adequate recharge credits to meet its pumping demands is part of providing this water.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES:

The Board of Trustees could adopt this Ordinance as presented, request a modification, or not adopt the Ordinance.

MOTION FOR APPROVAL:

I make a motion to adopt Ordinance 09-2022 – An Ordinance Approving a Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins for the Purpose of Leasing Augmentation Water

ACTION REQUESTED:

MOTION, SECOND, ROLL-CALL VOTE

(Emergency Ordinances require affirmative votes from a minimum of six (6) Trustees.)

**TOWN OF WIGGINS, COLORADO
ORDINANCE NO. 09-2022**

**AN EMERGENCY ORDINANCE APPROVING A WATER LEASE AGREEMENT BETWEEN THE TOWN OF
CASTLE ROCK AND THE TOWN OF WIGGINS FOR THE PURPOSE OF LEASING AUGMENTATION
WATER**

WHEREAS, the Town, acting by and through its Water Enterprise, is authorized by applicable law, including but not limited to C.R.S. § 31-15-801 et seq., to enter into long-term lease agreements for governmental or proprietary purposes; and

WHEREAS, the Town previously entered into a Water Lease Agreement with the Town of Castle Rock dated January 5, 2016; and

WHEREAS, the Town entered into a First Amendment to the Water Lease Agreement dated March 8, 2017, which extended the term of the lease and increased the amount of leased water as it becomes available; and

WHEREAS, the Board of Trustees deems it necessary and desirable for the efficient and proper functioning of the Town and for the health and safety of the Town's inhabitants to continue to lease from the Town of Castle Rock certain recharge credits for augmentation of the Town's tributary well pumping; and

WHEREAS, the Board of Trustees has determined it is in the best interest of the Town and its inhabitants to enter into the lease contemplated herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO:

Section 1. The proposed Water Lease Agreement Between the Town of Castle Rock and the Town of Wiggins, acting by and through the Town of Wiggins Water Enterprise, and the Town of Castle Rock, acting by and through the Town of Castle Rock Water Enterprise (the "Lease") is hereby approved in essentially the same form as the copy of such Lease accompanying this Ordinance. This Ordinance and the parties' obligations under the Lease are subject to the provisions and contingencies set forth in the Lease.

Section 2. The Mayor and Town Clerk are authorized to execute the Lease in substantially the same form as the copy attached hereto; further, the Mayor and Town Manager are hereby granted the authority to negotiate and approve such revisions to the Lease as the Mayor, Town Manager and legal counsel for the Town determine are necessary or desirable for the protection of the Town, so long as the material terms and conditions of the Lease are not altered.

Section 3. The Mayor, Town Manager, Town Clerk and Town Staff are further authorized to do all things necessary on behalf of the Town to perform the obligations of the Town under the Lease.

Section 4. The Board of Trustees herewith finds, determines and declares that this Ordinance is necessary to the immediate preservation of the public health, safety, and welfare to ensure the availability and sustainability of the Town's water sources. Therefore, the Board of Trustees herewith further finds, determines and declares that it is necessary for this Ordinance to take effect immediately, provided the same has been adopted and signed by the Mayor and approved by three-fourths of the entire Board of Trustees.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED BY TITLE ONLY, BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO THIS 15th DAY OF JUNE, 2022.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Deborah Lee, Town Clerk

I, Deborah Lee, Town Clerk of the Town of Wiggins, Colorado, hereby certify and attest that the foregoing Ordinance No. 09-2022 was introduced, read, adopted and ordered published by title only, at a regular meeting of the Board of Trustees of the Town of Wiggins, Colorado on the 15th day of June, 2022. This Ordinance was published in The Fort Morgan Times on June____, 2022.

Dated _____

**WATER LEASE AGREEMENT
BETWEEN THE TOWN OF CASTLE ROCK AND THE TOWN OF WIGGINS**

THIS WATER LEASE AGREEMENT ("Agreement") is entered into this _____, by and between the Town of Castle Rock, a home rule municipal corporation by and through the Town of Castle Rock Water Enterprise ("Castle Rock"), as lessor, and the Town of Wiggins, by and through the Wiggins Water Enterprise ("Wiggins"), as lessee. Castle Rock and Wiggins are collectively referred to as "the Parties."

RECITALS

WHEREAS, Castle Rock owns 60.4 percent of the first 1,275 acre-feet (a.f.), up to 770 a.f. annually, of recharge credits decreed in Case No. 89CW27, District Court, Water Division No. 1, ("Rothe Recharge Credits"); and

WHEREAS, pursuant to Case No. 89CW27, Castle Rock and other owners operate the Sublette Recharge Project ("Project"), which diverts water from the South Platte River at the Riverside Canal into recharge ponds that accrete water to the South Platte River to generate recharge credits; and

WHEREAS, recharge credits from the Project are used by Castle Rock and the other owners to augment depletions from alluvial wells, pursuant to Case No. 89CW27; and

WHEREAS, Case No. 89CW27 authorizes the lease of excess recharge credits to third parties for use in judicially approved plans for augmentation; and

WHEREAS, Wiggins desires to lease excess Rothe Recharge Credits for augmentation of Wiggins' tributary well pumping pursuant to Case No. 11CW131 and Castle Rock desires to lease such excess Rothe Recharge Credits to Wiggins.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Castle Rock and Wiggins agree as follows:

1. **Lease of Water.** Castle Rock hereby leases to Wiggins the following excess Rothe Recharge Credits: three hundred twenty-five and four tenths (325.4) acre-feet (a.f.) in the first year and six hundred (600) a.f. in the second year for a period of two years ("Leased Water"). Regardless of the date of mutual execution of this Agreement, for the purposes of this Agreement, the first year shall begin on the date that the condition precedent described in paragraph 2 is fulfilled ("Fulfillment Date"). The second year shall begin on the second anniversary of the Fulfillment Date.

2. **Condition Precedent to Payment and Water Delivery.** Wiggins' payment obligations in paragraph 3 and Castle Rock's delivery obligations in paragraph 5 are contingent on the Leased Water being accepted as an augmentation source in Wiggins' plan for augmentation in Case No.

11CW131. Within thirty (30) days of the mutual execution of this Agreement, Wiggins shall file notice pursuant to paragraph 19.1 of Case No. 11CW131 to include the Leased Water as an augmentation source.

a. If no objection is filed to the notice within the thirty-five (35) day period, then this condition precedent shall be deemed fulfilled.

b. If an objection is filed to the notice within the thirty-five (35) day period, then Wiggins shall diligently attempt to resolve the objections. Wiggins shall obtain approval from Castle Rock of any terms and conditions to be placed on use of the Leased Water for augmentation. If the objection is resolved in a manner acceptable to both Wiggins and Castle Rock, then this condition precedent shall be deemed fulfilled.

c. If Wiggins does not obtain approval of the Leased Water as an augmentation source with terms and conditions acceptable to Castle Rock or within eighteen (18) months of the mutual execution of this Agreement, then this Agreement shall automatically terminate.

3. **Lease Price.** Wiggins shall pay to Castle Rock: forty thousand six hundred and seventy-five dollars (\$40,675) in the first year and seventy-five thousand dollars (\$75,000) in the second year, which is one hundred twenty-five dollars (\$125) per a.f. of Leased Water. Wiggins' lease payment for the first year shall be due thirty (30) days after the Fulfillment Date. Wiggins' lease payment for the second year shall be due on the second anniversary of the Fulfillment Date.

4. **Term.** This Agreement shall commence upon the Fulfillment Date and terminate two years after the Fulfillment Date, provided that the parties may renew this Agreement upon written agreement by both parties.

5. **No Warranties or Guarantees.** Subject to sub-paragraphs 5.a. through 5.c. below, Castle Rock shall make available to Wiggins the Leased Water.

a. Within seven (7) days of the date of this Agreement and within seven (7) days of the anniversary of the Fulfillment Date, Castle Rock shall provide to Wiggins a written estimate of the monthly volumes of Leased Water available for use by Wiggins during the subsequent twelve (12) months.

b. Castle Rock will make the Leased Water available to Wiggins on an "as is" basis. The decreed uses of the Leased Water include augmentation as set forth in Case No. 89CW27. It shall be the responsibility of Wiggins to obtain any additional approvals necessary to use the Leased Water for Wiggins' intended purposes, including but not limited to the approvals by the Colorado Division of Water Resources and the District Court, Water Division No. 1. Castle Rock shall cooperate with Wiggins in obtaining any required additional approvals from any entity. Castle Rock makes no warranties or guarantees that such approvals can be obtained.

c. Because of the possibility of drought, mechanical failures, or other extraordinary circumstances, Castle Rock cannot guarantee delivery of water. If Castle Rock cannot

deliver to Wiggins the full 925.4 a.f., Castle Rock shall refund to Wiggins the lease price for any water requested but not delivered at a rate of \$125 per a.f. Such a refund shall be Wiggins' sole and exclusive remedy against Castle Rock for any breach or non-performance of any obligation under this Agreement.

6. **Remedy for Non-Payment.** If Wiggins fails to make any payment when due, Castle Rock may, after sixty (60) days written notice to Wiggins and Wiggins' failure to make payment, declare this Agreement terminated and notify the Water Commissioner that the Leased Water is no longer available for augmentation.

7. **Accounting and Measurement.** Wiggins shall provide Castle Rock with accounting showing the monthly volume of the Leased Water actually used to augment well pumping before the tenth (10th) day of each month following such well pumping. Wiggins shall install and maintain flow measurement devices on any wells augmented using the Leased Water. Castle Rock may verify at any time the accuracy of the flow measurement devices used by Wiggins.

8. **No Carryover and No Credit Toward Payments.** Leased Water not used by Wiggins for augmentation in any year shall not carry over for the benefit of Wiggins into the next year. In addition, Wiggins shall not be entitled to a credit or a refund for payments made for Leased Water Wiggins did not actually use on an annual basis.

9. **Termination.** This Agreement may be terminated by either party, for any reason, with one hundred and eighty (180) days advance written notice. Because pumping Wiggins's wells creates ongoing augmentation obligations that continue after pumping stops, if Castle Rock terminates under this provision, then notwithstanding termination, the lease shall continue only to the extent necessary for Wiggins to continue to augment ongoing depletions resulting from pumping prior to termination, but in no event shall Castle Rock have an obligation to provide Leased Water after the Termination Date.

10. **Notice.** All notices required to be given by either Party to the other shall be made in writing and: hand delivered; sent by first class United States mail, postage prepaid, addressed as follows; or via electronic mail as follows:

If to Town: Town of Castle Rock
Attn: Town Attorney
100 N. Wilcox Street
Castle Rock, CO 80104
Phone: (303) 660-1028
Legal@crgov.com

With a copy to: Town of Castle Rock
Attn: Mark Marlowe, Utilities Director
175 Kellogg Court
Castle Rock, CO 80109
Phone: (303) 733-6001
mmarlowe@crgov.com

If to the Town of Wiggins: Town of Wiggins
Attn: Tom Acre, Town Manager
304 Central Avenue
Wiggins, Colorado 80654

With a copy to : Hayes Poznanovic Korver LLC
Attn: Matthew S. Poznanovic, Water Counsel
700 17th Street, Suite 1800
Denver, CO 80202

11. **Entire Agreement.** This Agreement represents the entire agreement between the Parties on the matters set forth herein and supersedes all prior negotiations, representations or agreements respecting said matters whether written or verbal.

12. **Binding Agreement.** The execution of the agreement by Castle Rock, as lessor, and Wiggins, as lessee, constitutes the execution of a binding lease agreement by those Parties on the terms and conditions contained herein.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director Castle Rock Water

LESSEE:

ATTEST:

TOWN OF WIGGINS, COLORADO

Deborah Lee, Town Clerk

Christopher Franzen, Mayor

Approved as to form:

STATE OF COLORADO)
) **ss.**
COUNTY OF _____)

The foregoing instrument as acknowledged before me this ____ day of _____, 2022 by
_____ as _____ and _____ as
_____ for the Town of Wiggins.

Witness my official hand and seal.
My commission expires:

Notary Public



STAFF SUMMARY

**Board of Trustees
Special Meeting
June 15, 2022**

Date: June 13, 2022

ADGENDA ITEM NUMBER: 4

TOPIC: Purchase Fireworks for the Fourth of July Celebration

Responsible Staff Member: Tom Acre, Town Manager

BACKGROUND

The Town of Wiggins takes great pride in providing community members with celebratory entertainment and family friendly events. Wiggins has been providing fireworks shows community for several years to end a day full of festivities to celebrate the Fourth of July. The exception was in 2020 due to fire restrictions and the Covid-19 pandemic.

SUMMARY

The Board of Trustees have recently requested that staff organize 4th of July events and parade for the community members in the Town. The staff has reached out to Tri -State Fireworks to supply the Town with the necessary fireworks and choreography for shooting the fireworks display for the night of July 4, 2022.

The Town has used Tri-State Fire in the past. Tri-State Fire requires a contract with the Town in order to fulfill the display order. They will not be the company to shoot the fireworks but they will provide the Town with a choreography chart to help the installation crew set up the display in proper shooting order. We ordered the fireworks earlier this year and due to cost increases, the cost to get a similar show as last year increased the cost of the show.

Staff has worked Margaret Journey, a certified fireworks technician by the State of Colorado to shoot the fireworks. Again, this year, she is volunteering her time to the Town for this event. She currently shoots the Jackson Reservoir fireworks displays. Staff is organizing volunteers over the age of 18 to assist with putting the display together.

FISCAL IMPACT

Approving the resolution affects the budget the Board of Trustees approved for the 2022 year by expending a portion of the budget allocated to the 4th of July event. Approval of this resolution will allow the Town Manager to sign the contract to purchase \$14,300 in fireworks with a choreographed plan.

APPLICABILITY TO TOWN OBJECTS AND GOALS TO PROVIDE SERVICES

Providing the fireworks display for the community members of Wiggins and surrounding areas supports the Town's goal to continue to provide opportunities for the community to continue the tradition of coming together during the holidays and providing good family entertainment.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES

The Board of Trustees may adopt this resolution as presented, request an amendment, or not adopt the resolution.

MOTION FOR APPROVAL

I make a motion to adopt Resolution 18-2022: A Resolution Authorizing the Town Manager to Purchase Fireworks for the Fourth of July Celebration from Tri-State Fireworks.

ACTION REQUESTED

MOTION, SECOND, ROLL-CALL VOTE

(Resolutions require affirmative votes from the majority of Trustees present)

**TOWN OF WIGGINS, COLORADO
RESOLUTION 18-2022**

**A RESOLUTION AUTHORIZING THE TOWN MANAGER TO PURCHASE
FIREWORKS FOR THE FOURTH OF JULY CELEBRATION FROM TRI-
STATE FIREWORKS**

WHEREAS, the Town of Wiggins (“Town”) desires to purchase fireworks from Tri-State Fireworks for the Town’s annual Fourth of July Celebration; and

WHEREAS, the Board of Trustees has appropriated funds in the amount of \$20,000 in the 2022 Budget for the Fourth of July Event, including procurement of fireworks; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO:

Section 1. The Board of Trustees hereby authorizes the Town Manger to purchase Fireworks in an amount up to \$14,300 and in general accordance with the attached exhibit.

Section 2. The Town Manger and Town Clerk are hereby authorized to execute and deliver all documents and monies in accordance with this resolution.

INTRODUCED, ADOPTED AND RESOLVED THIS 15th DAY OF JUNE 2022.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Deborah Lee, Town Clerk

DISPLAY AND SERVICES AGREEMENT

THIS PYROTECHNIC DISPLAY AND SERVICES AGREEMENT (hereinafter referred to as "Agreement" made and entered into this Eleventh day of May, by and between Tri-State Fireworks, Inc. P.O. Box 31 Brighton, CO 80601 (hereinafter referred to as "SELLER) and:

Town of Wiggins
304 Central Ave
Wiggins, CO 80654

(hereinafter referred to as "BUYER")

1. **TIME AND PLACE: POSTPONEMENT/CANCELLATION,** SELLER agrees to deliver display fireworks product for the execution of fireworks display to be held on:

July 4, 2022

At the following location: Wiggins, Colorado

In the event of early termination by the BUYER or Inclement Weather, (generally excessive wind and/or precipitation) an alternate date during the 2021 calendar year is to be designated by BUYER and agreed upon by SELLER, at the same place set forth herein above. It is agreed and understood by and between the parties hereto that BUYER shall have sole, exclusive and final determination of the suitability of the weather conditions at the time of the display, and in the event BUYER should determine that the weather conditions are such that an unsafe or hazardous condition may exist, BUYER shall have the exclusive right and option to postpone the starting time of the display and/ or delay the display in its entirety, until conditions have improved and are appropriate for the safety of all involved, or until the alternative inclement weather date as set forth hereinabove. In the event the display cannot be postponed to an alternate date within the calendar year, SELLER shall have the right to retain, thirty five percent (35%) of the total contract price for expenses incurred and services rendered.

2. **INSURANCE:** SELLER agrees to provide a Certificate of Insurance showing SELLER and BUYER. The BUYER agrees to provide a complete list of additional insured to be named on the certificate.

3. **SECURITY/SAFETY:** BUYER is responsible for procuring and managing the following: Adequate security personnel, barricades, ropes with flags, etc., to barricade all closed areas to spectators; sufficient space to be clear and free of all persons except those expressly authorizes or put in place by BUYER.

4. **PREPARATION OF DISPLAY:** BUYER shall be responsible for all aspects of the setup and operation of the display.

5. **PLACEMENT:** BUYER shall determine the placement and arrangement of fireworks display devices, spectator viewing areas, and any and all equipment involved with the pyrotechnic display to ensure the highest degree of show integrity and shall have sole discretion over placement necessitated by applicable federal, state, local safety, fire or other regulations.

6. **COMPENSATION:** Compensation shall be made to the SELLER in the amount of Fourteen Thousand Three Hundred Dollars (\$14,300.00), to be paid upon delivery. Unpaid accounts are subject to one and one half percent (1 1/2%) interest charge per month after fifteen days. All applicable state or local sales tax will be payable by the BUYER.

7. **INDEMNIFICATION:** It is understood that BUYER will indemnify and hold harmless the SELLER hereunder, its agents, employees and persons contracted by SELLER for and against all losses, damages, demands, costs, claims, suits and other related actions or proceedings of whatever nature or kind resulting from damages or injury arising in any way out of the fireworks products or other products furnished by SELLER under the terms of this Agreement, resulting from any source other than one the negligence of SELLER hereunder, or its agents or employees, or from a source other than one for which insurance coverage has been provided pursuant to paragraph three of this agreement above.

8. **CONSTRUCTION/ASSIGNMENT/APPLICABLE LAW:** If any term, provision, covenant, or condition of this Agreement is held by any court of competent jurisdiction to be invalid, void or unenforceable or in any such provision is waived or not enforced by any party hereunder, the remainder of the provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated, This Agreement, including any documents incorporated or referred to herein, constitutes the entire Agreement between the parties, and this Agreement may not be altered or amended except by written addendum to this Agreement executed by both BUYER and SELLER, This Agreement shall be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of each of the parties. It is agreed and understood by and between the parties hereto that this Agreement is subject to, and shall be interpreted under, the laws of the State of Colorado, and any aspect of this Agreement shall be controlled by and interpreted under the laws of the State of Colorado, as they may exist from time to time.

9. **ATTORNEY FEES:** If any legal action is necessary to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover all costs of suit and reasonable attorney's fees.

TRI-STATE FIREWORKS, INC.
"SELLER"

TOWN OF WIGGINS
"BUYER"

By: _____

By: _____

Date: May 11, 2022

Date: _____



Ethics, Liability, and Best Practices for Elected Officials

Tami A. Tanoue, CIRSA Executive Director
April 28, 2022



Introduction

- Congratulations on becoming a member of the Town's governing body!
- Especially if this is your first term, you may find some elements of your new position to be very different from what you may encounter in your other pursuits.
- The purpose of this training is to introduce you to some practices that will maximize your effectiveness, while minimizing your potential liability, in these areas:
 - Governance versus administration;
 - Personal conduct; and
 - Meeting practices - transparency.

Governance versus Administration

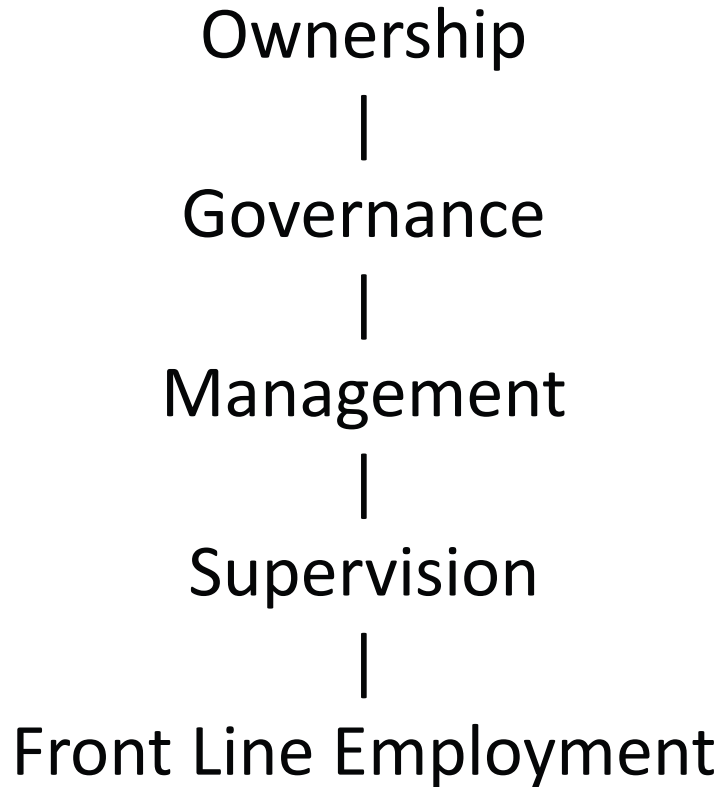
- John Carver’s work on “policy governance” is perhaps the most comprehensive model for board governance
- The model addresses many common and recognizable efficiencies in board-staff relationships
- Carver’s book, “Boards That Make a Difference” is an excellent resource, as is the accompanying booklet, “The Policy Governance Model and the Role of the Board Member”
- We also have a local expert, Ken Schuetz, whose take on a governance model is called “Aligned Influence”
(www.alignedinfluence.com)
 - CIRSA will cover 50 percent of your entity’s exploration of Aligned Influence – please contact CIRSA if interested

Governance Characteristics

Is your focus on governance rather than management or administration?

- Management is not the same thing as governance! Being a “super-manager” is still not governing.
- Governance is primarily policy-setting, big picture, and forward-looking, rather than making reactive, case-by-case decisions as issues arise, or after-the-fact after a problem surfaces
 - Exception: Councils, boards, and commissions also engage in fact-specific, case-by-case decision-making when acting in a quasi-judicial capacity
 - Town Board, Planning Commission, Board of Adjustment
 - How you exercise your quasi-judicial responsibilities can have constitutional implications!

Where are you focusing your efforts?



- **Time Horizons:** Yours should be the furthest out!
- **Dealings within Chain of Command:** Don't jump more than one level!
- **No Redundancy:** Unlike other levels in the organization, there is no one else who can step in and do your job!

Governance characteristics

- Does your body speak with one voice?
 - “Deliberate in many voices, but speak with one”
- Recognize that, while there may be dissension or disagreement, the CEO (the Manager) and staff are accountable only for directions given by the body as a whole
 - If multiple voices “speak” even after a decision is made, then the direction of the body becomes unclear
- Is the voice directed at the CEO, the governing body’s primary employee?
 - Directing the voice below the CEO level can interfere with the staff’s understanding of your direction and/or create chain of command or chain of communications issues

Honoring the Governance-Management Distinction

- Why is this a liability issue?
 - Public officials have protection from liability when they are within the “scope of employment” – term used in Colorado Governmental Immunity Act
 - “Scope of employment” means everyone must respect the parameters of your job description
 - So to the extent you have organizational parameters that include an allocation of responsibilities, those parameters are part of your job description; honoring those parameters will help keep you within the “scope of employment”
 - Liability coverages also hinge on your being within the scope of your authorized duties
 - If you are going outside the parameters, you could be outside the scope of your job description...and outside the scope of your liability protections!
 - If you’re doing management/administration, then who’s doing the governance? And what about those who are supposed to be doing the management/administration? What are they doing?

Personal Conduct

- The way you conduct yourself in relation to other members of the body, staff, and the community greatly impacts your effectiveness as a governing body member
- The incivility and divisiveness that characterize partisan politics need not be imported into nonpartisan local government!
 - Are members able to disagree on issues and maintain civility?
 - Does the “residue” of disagreement on one issue continue to hang over the next issue?
 - Is the vote constantly divided along the same lines, whatever the issue?

Personal Conduct

- Is anyone maintaining the “outsider” perspective even after becoming the ultimate “insider”?
 - You may have started as a “critic” of the status quo, or been propelled to seek public office because of one particular issue of interest to you, but changes to your focus and perspective may need to change once you are in public office
 - At its most problematic, the “outsider” position may eventually turn into an “outlier” situation
 - See chapter on the Outlier in the CIRSA-CML Ethics, Liability and Best Practices publication
 - Disagreement or dissension does not make an “outlier.” The outlier is one who has staked out a position where **being oppositional becomes the main point of his or her holding office**
 - The “outlier” may find himself/herself becoming ineffective, and a source of consternation and disruption to the rest of the body

Personal Conduct

Is anyone not recognizing that a governing body member's power can be exercised only through the body as a whole? **Acting as "I" rather than "we"?**

- Wiggins is a statutory town
- The Mayor is a member of the Board, and other than presiding over meetings, has the same responsibilities as Trustees
- Other than certain Mayoral responsibilities, there are NO individual responsibilities given to individual elected officials!
 - All responsibilities are exercised as a body, not individually
 - Inappropriately acting as "I" can be associated with Individual liability!
- In a Board/Manager format, "role discipline" is especially important – you've invested in establishing the "gold standard" of municipal government!
 - This format means that the Board deals with staff:
 - Through the Manager, not with others in the chain of command;
 - And as a Board, not as individual Trustees
 - When "role discipline" is lost, you are at risk of squandering the investment you've made in the Manager format

Personal Conduct

What are some of the ways in which “I” rather than “we” actions can happen?

- When one member of the Board gives instructions or orders to staff members – to the Manager or others
 - Even if instructions or orders were not intended, keep in mind your “perceived” power – it’s easy for a question to be misconstrued as an instruction
- When one member continues to pursue his or her own agenda even though a majority of the Board has decided on a different direction – undermining, criticizing, second-guessing
- When one member takes on an “advocate” or “constituent service” and goes further than to hand off an issue to Manager (or other appropriate staff member)

Personal Conduct

What are some of the ways in which “I” rather than “we” acts can happen, cont’d

- When communications between one member of the Board and staff members below the level of the Manager end up in:
 - Bypassing of the chain of command; or
 - Cutting out the Manager or other staff members from the chain of communications
- This can happen formally or informally
 - Social interactions, for instance, can inadvertently lead to these issues
- When you decide that some administrative function isn’t being done properly, so you take matters into your own hands as a Trustee
 - The case of the “competing citizen surveys”
 - The case of the Trustee who dug a ditch
 - The case of the Councilperson/Stalker

Personal Conduct

- And let's spend a moment on social interactions outside the meeting
 - Can they be misperceived by the public?
 - If 3 or more gather, even if public business is not being discussed, observers may think otherwise – and the perception of an open meetings violation can undermine public confidence as easily as reality
 - Being cautious about activities that create misperceptions is important
 - Do you ever hang around AFTER the meeting to “recap” the discussion?
 - And, of course, “we sort out everything on the agenda at the bar across the street before the meeting” is blatantly problematic!

Personal Conduct

- Is there an “imbalance of information” on the body?
- Is there a sense of distrust among one another? Is there constantly the same split vote on every issue with the same people lining up on the same side every time?
 - This could mean that the entire power of the governing body is always being given over to the one “tie breaker”!
 - Or that you are always on the losing side of a vote!
- If there is a perpetual division in the body, look for ways out of it: establish and make a commitment to abiding by norms of conduct
 - Rules of Procedure, Rules of Conduct
 - Which Rules of Procedure do you use/should you use?
 - Retreat to hash out issues, perhaps with a mediator or facilitator

Personal Conduct

- Treat each other with respect
 - Discussion and disagreement are a healthy part of the decision-making process, but must be done respectfully
 - No fisticuffs, physical or verbal!
 - No personal jabs
- Say it once, say it succinctly, no filibustering!
 - Respect includes being respectful of the time of the body and other members
 - If one person dominates the discussion, what kind of example is being set?
 - Can you really run on all cylinders if “equal participation” is not encouraged?
 - Have a formal or informal “policy” of going around the dais and letting each person have one shot at speaking?
- No arguing back and forth among members
 - All comments should be addressed to the CHAIR!

Personal Conduct

- With respect to staff:
 - Is staff viewed as “the enemy”?
 - Is there frequent second-guessing of staff, or a desire on the part of one or more members of the body to do individual “research” on staff recommendations?
 - Is staff frequently blindsided by issues that are raised for the first time only in the middle of a meeting?
- With respect to the community:
 - Are “public comment” periods turning into “public inquisition” periods or “public argument” periods?
 - Is “staff bashing” or “member bashing” happening at your body’s meetings?
 - Unproductive, unseemly, and morale-crushing!

Honoring Personal Conduct Guidelines

- Why is this a liability issue?
 - CIRSA's observation: How the governing body's members interact with one another and with staff is a great predictor of liability. A dysfunctional body inevitably attracts claims.
 - A body that mistreats staff or citizens is modeling bad behavior organization-wide. "You know what" rolls downhill!
 - A body that creates or allows chaos in the chain of command is asking for employment claims!
 - A body that is over-involved in administrative matters is straying away from its "job description" as well as its best areas of immunity.

Transparency and Public Participation - Meetings

- Transparency is a basic expectation of the citizens for meetings of the governing body
- Citizens take great interest in the goings-on of their community, how/when those goings-on are discussed, and opportunities to listen in on and/or participate in the discussion
- “Watchdogs” may be present to ensure transparency is maintained and appropriate participation is afforded
- A lack of transparency or a perception of inadequate or ineffective opportunities for public participation can cause massive trust and credibility issues

Honoring Transparency

- Open Meetings Law (OML) applies to all meetings of the governing body, boards, commissions, committees, etc.
 - Applies to 3 or more or a quorum, whichever is less
 - Requires discussion/action on all public business to take place only at a meeting open to the public and of which timely notice has been given
 - Permits executive sessions only for limited and specified purposes and following specified procedures
- It's critical to conform to the letter and the spirit of the OML in conducting meetings
 - Recent Douglas County School District case highlights importance of “spirit of the law”

Orderly and constructive public participation

- Lay the groundwork for orderly public meetings
- Council/Board rules of procedure/rules of conduct should address matters such as:
 - Time limits for speakers
 - Be consistent about enforcing time limits
 - No “out of order” comments
 - Recess or adjournment for disruptions
 - And in these times, whether “virtual” meetings are allowed, and if so, what the protocols are
 - See CIRSA articles: <https://www.cirsa.org/blog/remote-council-board-meetings-during-pandemic-times/> and <https://www.cirsa.org/blog/concerns-about-quasi-judicial-hearing-electronically/>

Public participation, cont'd

- Governing body presiding officer (Mayor or Chairperson) is crucial in maintaining order
- Culture of civility flows from the top down – if members practice incivility towards one another or towards staff/citizens, they can expect incivility from citizens in return
- Maintain a degree of formality at meetings – use titles, insist that speakers come to podium to be recognized, etc.
- Discreet law enforcement presence can be helpful
- CIRSA training session on orderly meetings and sound quasi-judicial practices available
 - Your agendas do include a substantial number of quasi-judicial issues – licensing and permitting issues, for example – and these issues, if not handled properly, are high-risk

Public participation, cont'd

- Are “public comment” periods turning into “public inquisition” periods or “public argument” periods?
- What are the dynamics that are allowing this to happen?
 - “I’d like to respond to what you just said.”
 - “I’d like to answer that question.”
- Members of the body should not be baited into responding inappropriately when someone says something inflammatory
 - You always have the last word: you’re the decider. You don’t need to engage in argument, stop the offending remarks, or try to have the last word during “public comment.”
- And be very, very aware that Town Hall operations, including public comment period at your meetings, can become a “testing ground” for citizens and First Amendment issues – see CIRSA articles: <https://www.cirsa.org/news/will-your-return-to-normal-include-a-first-amendment-audit-be-prepared/> ; <https://www.cirsa.org/news/first-amendment-audits-coming-to-your-town/>

Public participation, cont'd

“In the future, everyone will be famous for 15 minutes.” ~Andy Warhol

“In Council meetings, everyone gets to speak his or her mind for the allotted period.”

~Tami Tanoue

- Don't try to suppress the content of citizen speech! It's not just unlawful, it's futile! People do not take well to being suppressed.
- But if someone is being disruptive, engaging in personal attacks, etc., then a response may be appropriate.
 - “Disarm” a tense situation. Don't match tone for tone, and “out-shouting” doesn't work.
 - If a response is necessary, lower your tone to below the speaker's.
 - De-escalate, don't escalate!
 - Establish and communicate shared norms for meetings, e.g., “We appreciate everyone's viewpoints, but not personal attacks. Personal attacks are unproductive and unhelpful. Please redirect your comments towards the issues, and away from personalities, so that we can better understand your concerns..”

Transparency

Why is this a liability issue?

- We tend to see the same firms over and over in litigation against municipalities for alleged OML violations
- CIRSA has “executive session defense cost coverage” for its member governing bodies for this reason
- Efforts are made, through litigation, to “push the envelope” on OML interpretations that are not favorable to public entities...don’t be the one to “make bad law”!
- You may suffer the embarrassment of having your executive session discussions being made public
- You may be used as the “bad example” in legislative efforts to amend the OML
- Thwarting public participation can likewise bring about litigation for suppressing speech – we’ve now seen a couple of instances of this

Conclusion

- Ethical behavior is not just about instances where a financial or other conflict of interest may exist
- In a larger sense, ethical issues are present in all of your dealings with one another, staff, and the community
- The ethical choices you make in those dealings will either enhance or reduce your effectiveness, and enhance or reduce your liability
- Following best practices for maximizing your effectiveness as a governing body member also maximizes your liability protections!

Resources

- Ethics, Liability and Best Practices, 2nd Edition:
<https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf>
- Video training on liability issues:
https://www.cirsa.org/member_resource/in-the-scope-of-your-authority-preventing-public-officials-liability/?member=true
- CIRSA's resource page for elected officials:
<https://www.cirsa.org/safety-training/elected-officials/>
- CML's website contains many elected official resources:
www.cml.org

About CIRSA - Colorado Intergovernmental Risk Sharing Agency

- Public entity self-insurance pool for property, liability, and workers' compensation coverages, formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations
- Not an insurance company, but an entity created by intergovernmental agreement of our members
- Total membership today stands at 282 member municipalities and affiliated legal entities
- Member-owned, member-governed organization, with a Board made up entirely of municipal officials
- Seek to be continually responsive to the liability-related needs of our membership – coverages and associated risk management services, sample publications, training, and consultation services, as well as specialty services such as home rule charter review
- Largest concentration of liability-related experience and knowledge directly applicable to Colorado municipalities

About the Speaker

Tami A. Tanoue

- Executive Director for CIRSA since August, 2018
- Previously in-house General Counsel/Deputy Executive Director for CIRSA
- Previously in private practice with the firm of Griffiths, Tanoue, Light, Harrington & Dawes, serving CIRSA as its contract General Counsel for 12 years, and serving as City or Town Attorney for several Colorado municipalities.
- Previously Staff Attorney for the Colorado Municipal League, representing the collective interests of Colorado municipalities.
- Regular speaker on local government liability topics; author of several publications on liability issues.

Thank you!

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