

Posted on August 13, 2024 at: 10:00



TOWN OF WIGGINS

**BOARD of TRUSTEES
WORK SESSION**

August 14, 2024 at 7:00 P.M.

**304 CENTRAL AVENUE
WIGGINS, CO 80654**

***THE PUBLIC IS INVITED & ENCOURAGED TO ATTEND THE MEETING VIA ZOOM
OR WATCH ON YOUTUBE IF THEY ARE UNABLE TO ATTEND MEETING IN PERSON***

GO TO THE FOLLOWING SITE <https://us06web.zoom.us/j/82016603203> FOR THE MEETING LINK

WORK SESSION AGENDA

AGENDA TOPIC	ESTIMATED TIME
1. Discussion on Changing Online Bill Pay from Invoice Cloud to Express Bill Pay	10 minutes
2. Discussion on Polymorphic Contract	10 minutes
3. CCWCD – Randy Ray	15 Minutes
4. Updates and Other Items	5 minutes



**TOWN OF WIGGINS
SPECIAL BOARD MEETING
AGENDA**

AUGUST 14, 2024 AT 7:30 P.M.

**304 CENTRAL AVENUE
WIGGINS, CO 80654**

***THE PUBLIC IS INVITED & ENCOURAGED TO ATTEND THE MEETING VIA ZOOM OR WATCH ON
YOUTUBE IF THEY ARE UNABLE TO ATTEND MEETING IN PERSON***

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I. INTRODUCTIONS

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

**II. CONSIDERATION OF DOCUMENTING TWO WATER AND SEWER TAPS WITH
CERTIFICATES TO MARC CARNIS**

A Motion to Approve the Creation of Two Water and Sewer Taps Certificates for Marc Carnis for the Lots Located at Elm Street and Emerald Avenue and Elm Street and Pearl Avenue

**III. CONSIDERATION OF A SECOND AMENDMENT TO PURCHASE CONTRACT TO BUY AND
SELL REALESTATE**

A Motion to Approve a Second Amendment to Purchase Contract to Buy and Sell Real Estate

IV. CONSIDERATION OF RESOLUTION 30-2024

A Resolution Granting Conditional Acceptance of Public Improvements for the Roberts 81 Subdivision

1. Resolution No. 30-2024

V. CONSIDERATION OF RESOLUTION 31-2024

A Resolution Granting Final Acceptance of Public Approvements Constructed for the Kiowa Park Subdivision

1. Resolution No. 31-2024

VI. CONSIDERATION OF RESOLUTION 32-2024

A Resolution Approving an Intergovernmental Agreement Between the Town of Wiggins and the Morgan County Clerk and Recorder Regarding the Conduct of the Administration of the November 5, 2024 General Mail Ballot Election

1. Resolution No. 32-2024

VII. EXECUTIVE SESSION

1. For discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: an employee who has requested the matter be discussed in open session; any member of this board or the appointment of any person to this board; or general personnel policies, specifically regarding remote work request

VIII. REPORT FROM EXECUTIVE SESSION

Remote work Request – for discussion, direction or action

IX. ADJOURNMENT

1. Closing Remarks by Mayor and Adjournment of Meeting



STAFF SUMMARY

Board of Trustees Special Meeting August 14, 2024

DATE: August 9, 2024

AGEND ITEM NUMBER: 2

TOPIC: Deliberation and Consideration Granting Water and Sewer Tap Certificates to Mark Carns

STAFF MEMBER RESPONSIBLE: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

It was brought to Staff's attention that the vacant properties located at the corner of Emerald Street and Elm Street and Elm Street and Pearl Avenue at one time had a water and sewer tap. However, the taps were never transferred to the new utility management system and the property continues to remain vacant.

Planning and Zoning Staff has been working with Public Works and the Utility Clerk to clear up some of the nuances by providing electronic documentation in the Caselle system. However, no structures on a property means that addresses are typically not present. In the absence of a physical address, staff has created a water/sewer certificate that can be provided to the land owner and a copy placed in the property file in the Planning and Zoning Office. Anyone with this certificate can redeem a water and sewer tap with the Town at the certificate's face value. The property owner would be responsible for any differences due to rate increases or tap size increases.

SUMMARY:

Staff is bringing the matter to the Board of Trustees for a motion to approve due to an absence of a Town Manager. In the past it was the Town Manager and Town Clerk attesting the signature that would approve the certificate.

FISCAL IMPACT:

Approving this Resolution has no negative impact on the Town's adopted budget. The water taps were historically paid for at some point in the past.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

Approving this conditional acceptance maintains good relationships the Town's developers and promotes forward motion of development of the vacant land in the near future.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES:

- The Board of Trustees may make a motion for the item staff has provided for their consideration.
- The Board of Trustees may make a motion with additional conditions.
- The Board of Trustees may continue the agenda item to the next Board of Trustee meeting and request that staff or the applicant provide additional information to be brought forth.
- The Board of Trustees may not approve the motion.

MOTION FOR APPROVAL:

I make the motion to approve the creation of two water and sewer taps certificates for Marc Carns to be used as instructed on the certificates and eligible only for lots indicated on the certificates.

ACTION REQUIRED:

Motion, Second, Roll-Call, Vote.

(Motions require affirmative votes from the majority of Trustees present.)

Certificate No. Carns-2024-01

Town of Wiggins, Colorado

Water/ Sewer Tap Investment Certificate

Legal Name of Development: Parcel #122310419002
Corona, Original Town, WI Block: 19, Lot 09 thru Lot 22 and Lot 27-34

This Water/Sewer Tap Certificate is issued to Marc Carns for one (1) Water Tap and one (1) Sewer Tap to be located on one (1) lot located within Corona, Original Town, WI Block: 19, Lot 09 thru Lot 22 and Lot 27-34. Once the taps are installed and allocated, they will run with the land. This certificate does not supersede any existing or future Town ordinances. This original certificate with embossed seal and silver border must be presented to the Town to redeem the allocated taps. The transfer of any taps before they are installed must be approved in writing by the Town Manager.

*Certificate to be used for a water tap (5/8”) and sewer tap (5/8”) installation & connection for a detached single-family dwelling All other uses may be approved by the Town Manager and bearer of this certificate may be required to pay the difference for a larger tap.

Tap Lot No.	Address Where the Tap has been applied	Date	TM Signature	Clerk Signature
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Installed Meter No.	Water: \$35,000.00 Sewer: \$10,000.00 Certificate Value: \$45,000.00
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Bearer of certificate shall be responsible for paying the difference of the values listed above and value of the current fees at the time of installation.

Chris Franzen, Town Mayor

Embossed
Town Seal

Nichole Seiber, Town Clerk

Certificate No. Carns-2024-02

Town of Wiggins, Colorado

Water/ Sewer Tap Investment Certificate

Legal Name of Development: Parcel #122310419003
Corona, Original Town, WI Block: 19, Lot 23 thru 26

This Water/Sewer Tap Certificate is issued to Marc Carns for one (1) Water Tap and one (1) Sewer Tap to be located on one (1) lot located within Corona, Original Town, WI Block: 19, Lot 23 thru 26. Once the taps are installed and allocated, they will run with the land. This certificate does not supersede any existing or future Town ordinances. This original certificate with embossed seal and silver border must be presented to the Town to redeem the allocated taps. The transfer of any taps before they are installed must be approved in writing by the Town Manager.

*Certificate to be used for a water tap (5/8”) and sewer tap (5/8”) installation & connection for a detached single-family dwelling All other uses may be approved by the Town Manager and bearer of this certificate may be required to pay the difference for a larger tap.

Tap Lot No.	Address Where the Tap has been applied	Date	TM Signature	Clerk Signature
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Installed Meter No.

Water: \$35,000.00
Sewer: \$10,000.00
Certificate Value: \$45,000.00

Bearer of certificate shall be responsible for paying the difference of the values listed above and value of the current fees at the time of installation.

Chris Franzen, Town Mayor

Embossed
Town Seal

Nichole Seiber, Town Clerk

SECOND AMENDMENT TO PURCHASE CONTRACT TO BUY AND SELL REAL ESTATE

THIS SECOND AMENDMENT is made and entered into this ____ day of _____, 2024 (the "Effective Date"), by and between the **Town of Wiggins**, a Colorado municipal corporation, hereinafter referred to as "Town" or "Seller," and **Michael K. Miller JR and Carey R. Miller**, hereinafter collectively referred to as "Purchaser".

RECITALS

WHEREAS, Seller and Buyer previously entered into a Purchase Contract to Buy and Sell Real Estate dated October 28, 201, as amended by that First Amendment dated July 7, 2022 (the "**Contract**") concerning the sale of approximately 13.36 acres of real property located in Morgan County, Colorado; and

WHEREAS, Seller and Buyer wish to amend the Contract as set forth below;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements contained herein, the sufficiency of which consideration is acknowledged by all parties hereto, the undersigned hereby agree as follows:

AMENDMENT

1. Paragraph 7 is amended to read as follows (words to be added are underlined; words to be deleted are ~~stricken through~~):

7. **Closing.** The closing for the Property shall be held on or before December 31, 2024 ~~within one hundred and eighty (180) days following Seller's execution of the Contract.~~ The specific date and time of the Closing shall be set by mutual written agreement of the parties. The place of Closing shall be the offices of the title company issuing the title commitment or such other place as may be designated by mutual written agreement of the parties.

2. Unless otherwise defined in this Second Amendment, capitalized terms used herein shall have the same meaning as they are given in the Contract.

3. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

4. Except as amended herein, all other provisions of the Contract shall remain in full force and effect. This Second Amendment contains the entire expression of the understanding between Buyer and Seller as to the subject matter hereof. There are no prior or contemporaneous agreements, oral or written, that are not entirely superseded hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first written above.

SELLER:

TOWN OF WIGGINS, a Colorado municipal corporation

Chris Franzen, Mayor

ATTEST:

Nichole Seiber, Town Clerk

Date: _____

PURCHASER:

Michael K. Miller JR

Carey R. Miller

Date: _____



STAFF SUMMARY

Board of Trustees Special Meeting August 14, 2024

DATE: August 9, 2024

AGEND ITEM NUMBER: 4

TOPIC: Deliberation and Consideration Granting Conditional Acceptance of Public Improvements for Roberts 81 Subdivision

STAFF MEMBER RESPONSIBLE: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

Stubs Gas & Oil, Inc. entered into a Development Agreement with the Town on July 26, 2023, The Development Agreement addressed completion of public improvements for the Roberts 81 subdivision as was required by the Bulk Subdivision Agreement which was approved on January 18, 2028. Stubs Gas & Oil, Inc., posted an Improvement Guarantee for those improvements that was equal to 125% of the construction costs exhibited as Exhibit B in attached Resolution 30-2023.

Public Improvements have been constructed and tested. Staff has received third party reports or has had tests observed by the Town Engineer and Public Works Supervisor. A conditional acceptance inspection has been performed by Town Staff.

SUMMARY:

In accordance to Section 3 of the Development Agreement, the Board of Trustees may grant conditional acceptance of the public improvements and authorize a reduction of the Letter of Credit in the amount of the required Improvement Guarantee. The Town will receive a new Letter of Credit for 25% of the Construction Costs. The new Letter of Credit will be held for a three-year warranty period.

FISCAL IMPACT:

Approving this Resolution has no negative impact on the Town's adopted budget.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

Approving this conditional acceptance maintains good relationships the Town's developers and promotes forward motion of development in Roberts 81.

OPTIONS AVAILABE TO THE BOARD OF TRUSTEES:

- The Board of Trustees may approve the Resolution staff has provided for their consideration.
- The Board of Trustees may approve the Resolution with additional conditions.
- The Board of Trustees may continue the agenda item to the next Board of Trustee meeting and request that staff or the applicant provide additional information to be brought forth.
- The Board of Trustees may not approve the resolution.

MOTION FOR APPROVAL:

I make the motion to adopt Resolution 30-2024 – A Resolution Granting Conditional Acceptance of Public Improvements Constructed for the Roberts 81 Subdivision.

ACTION REQUIRED:

Motion, Second, Roll-Call, Vote.

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

**TOWN OF WIGGINS, COLORADO
RESOLUTION NO. 30-2024**

**A RESOLUTION GRANTING CONDITIONAL ACCEPTANCE OF PUBLIC IMPROVEMENTS
CONSTRUCTED FOR THE ROBERTS 81 SUBDIVISION**

WHEREAS, the Town and Stubs Gas & Oil, Inc. entered into a Development Agreement dated July 26, 2023, for the Roberts 81 Subdivision; and

WHEREAS, the Development Agreement addressed completion of public improvements for the Subdivision as required by the Bulk Subdivision Agreement approved on January 18, 2018; and

WHEREAS, in accordance with the Development Agreement, Stubs Gas & Oil, Inc posted an Improvement Guarantee for those improvements; and

WHEREAS, the Town has conducted a Conditional Acceptance inspection and all improvements have been completed with no outstanding issues needed to be resolved, except as noted below; and

WHEREAS, in accordance with Section 3 of the Development Agreement, the Board of Trustees desires by this resolution to grant conditional acceptance of the public improvements and authorize a reduction in the amount of the required Improvement Guarantee.

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

Section 1. Pursuant to the Development Agreement between the Town and Stubs Gas & Oil, Inc., the Board of Trustees hereby grants Conditional Acceptance of the public improvements required under the Development Agreement for a three-year warranty period.

Section 2. Pursuant to Section 1.11(c) of the Subdivision Agreement, the Board of Trustees hereby authorizes a reduction in the required Improvement Guarantee to \$95,470, such amount being twenty-five percent (25%) of the construction costs for the Public Improvements, which shall be retained by the Town until Final Acceptance of the Public Improvements is granted, subject to the following condition:

- An acceptable bacterial test from a third-party company shall be submitted before the Improvement Guarantee is released.

INTRODUCED, READ, and ADOPTED this 14th day of August, 2024.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Nichole Seiber, Town Clerk

August 6, 2024

Borrower:
Stubs Gas and Oil Inc
PO Box 309
Wiggins, CO 80654

Lender:
Bank of Colorado
529 Main Street Suite 101
PO Box 1098
Fort Morgan, CO 80701


BENEFICIARY:
Town of Wiggins
304 Central Ave
Wiggins, Co 80654

Dear Sir or Madam:

This is to advise you that Irrevocable Standby Letter of Credit 6790004683 dated September 8, 2023, in the amount of Four Hundred Seventy-Seven Thousand Three Hundred Fifty Dollars and NO/100 (\$477,350.00) is set to terminate. This Letter of Credit expires at the close of business at Lender's address at 3:00 PM Mountain Standard Time on September 8, 2024. Lender agrees to honor all drafts presented in strict compliance with the provisions of the Letter of Credit on or before the expiration date.

ISSUER:
Bank of Colorado

X 
Cameron Armagost, Market President

X 
Darrick Ohr, Vice President

X 
Steven Klecka, President Stubs Gas and Oil Inc



MEMBER FDIC

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**TOWN OF WIGGINS, COLORADO
RESOLUTION NO. 30-2023**

**A RESOLUTION AUTHORIZING THE TOWN MAYOR TO SIGN THE
DEVELOPMENT AGREEMENT WITH STUBS GAS & OIL, INC. FOR THE ROBERTS
81 SUBDIVISION**

WHEREAS, a development agreement has been proposed between the Town of Wiggins (“Town”) and Stubs Gas & Oil, Inc. (Owner) for the Roberts 81 Subdivision (“Property”); and

WHEREAS, the Board of Trustees previously approved a Final Plat and a Preliminary Planned Development for the Roberts 81 Subdivision; and

WHEREAS, a Development Agreement addressing completion of public improvements for the Subdivision was required as a condition of the Bulk Subdivision Agreement approved on January 18, 2018; and

WHEREAS, the Town and the Owner desires to enter into this Agreement to set forth the terms pursuant to which the Property Owner will construct a portion of the water and sewer public improvements required.

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

Section 1. The proposed Development Agreement for the Roberts 81 Subdivision for the purpose of constructing water and sewer infrastructure as described in the Development Agreement (Exhibit A), is hereby approved in essentially the same form as accompanying this resolution.

Section 2. The Mayor is authorized to execute the Agreement and is further authorized to negotiate and approve on behalf of the Town such revisions to the Agreement as the Mayor, in consultation with the Town Manager, determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Development Agreement are not altered.

INTRODUCED, READ, AND ADOPTED THIS 26TH DAY OF JULY, 2023.



TOWN OF WIGGINS, COLORADO

[Handwritten Signature]

Christopher Franzen, Mayor

ATTEST:

[Handwritten Signature]

Tom Acre, Interim Town Clerk

EXHIBIT A
(Development Agreement)

DEVELOPMENT AGREEMENT
Roberts 81 Subdivision Phase 1 –
Water and Sanitary Sewer Utilities Improvements

THIS AGREEMENT is made and entered into this 26th day of July, 2023, by and between the **TOWN OF WIGGINS**, a Colorado municipal corporation whose address is 304 Central Avenue, Wiggins, Colorado 80654 (“Town”) and **STUB’S GAS & OIL, INC.**, a Colorado corporation, whose address is 16740 Highway 39, Wiggins, Colorado 80654 (“Owner”).

WHEREAS, Owner is the owner of the Roberts 81 Subdivision, which is legally described in Exhibit A, attached hereto and incorporated herein by reference, (the “Property”); and

WHEREAS, the Owner and Town entered into that certain Bulk Subdivision Agreement dated January 18, 2018 and recorded in the property records of Morgan County on February 16, 2018 at Reception No. 910367, which requires the Owner to enter into further agreement(s) with the Town relative to and guaranteeing the completion of infrastructure improvements required for the Property; and

WHEREAS, the Owner plans to construct water and wastewater utility improvements that will serve the Property; and

WHEREAS, the Town and the Owner desire to enter into this Agreement to set forth the terms pursuant to which the Property will construct the public improvements.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1. **Owner Obligation**. The Owner shall be responsible for performance of the covenants set forth herein.
2. **Construction Deadline; Warranty; Acceptance of Public Improvements**. (a) Owner shall at its sole expense construct and install, on or before October 31, 2023, all improvements required by this Agreement, including water lines, and sanitary sewer collection lines, which public improvements are set forth in Exhibit B. All such public improvements shall be completed by such date and in full conformance with drawings, plans and specifications approved in writing by the Town, and in full conformity with the Town’s construction specifications, ordinances, rules and regulations applicable at the time of construction plan approval.
 - (b) No later than fourteen (14) days after the public improvements are completed, Owner shall request inspection by the Town. If Owner does not request this inspection within fourteen (14) days of completion of improvements, the Town may conduct the inspection without the approval of Owner. Owner shall provide “as-built” drawings, in both hard copy and electronic file format acceptable to the Town no later than forty-five (45) days after the public improvements are completed. If Owner has not completed the public improvements on or before the completion date set forth in subsection (a), the Town may exercise its rights to secure performance as provided in Section 6 of this Agreement. If public improvements completed by Owner are satisfactory, the Town shall grant conditional acceptance,” which shall be subject to “final acceptance” as set forth in subsection (d). If

the public improvements completed by Owner are unsatisfactory, the Town shall provide written notice to Owner of the repairs, replacements, construction or other work required to receive "conditional acceptance." Owner shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After Owner completes the repairs, replacements, construction, or other work required, Owner shall request the Town reinspect the work to determine if conditional acceptance can be granted, and the Town shall provide written notice to Owner of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Owner's expense. If Owner does not complete the repairs, replacements, construction or other work required within thirty (30) days of said notice, the Town may exercise its rights to secure performance as provided in Section 6 of this Agreement. The Town reserves the right to schedule re-inspections, depending upon scope of deficiencies.

(c) All water and sanitary sewer main tapping within the Subdivision is subject to Town review and written approval of a "**Tapping Plan**" including crew, equipment, materials, and other submittals, and inspections as determined by the Town.

(d) For a three (3) year period from the date of "conditional acceptance" of the public improvements or after the first service tap is installed, whichever is later, Owner shall warrant all said improvements and, at its own expense, take all actions necessary to maintain said improvements and make all needed repairs or replacements which, in the reasonable opinion of the Town, shall become necessary. If within thirty (30) days after Owner's receipt of written notice from the Town requesting such repairs or replacements, the Owner has not completed such repairs, the Town may exercise its rights to secure performance as provided in Section 6 of this Agreement.

(e) At least thirty (30) days of the later of before three (3) years has elapsed from the issuance of conditional acceptance or the first service tap is installed, or as soon thereafter as weather permits, Owner shall request a "final acceptance" inspection. The Town shall inspect the improvements and shall notify the Owner in writing of all deficiencies and necessary repairs, if any. If there are no deficiencies, or after Owner has corrected all deficiencies and made all necessary repairs identified in said written notice, the Town shall issue to Owner a letter of "final acceptance." If Owner does not correct all deficiencies and make repairs identified in said inspection to the Town's satisfaction within thirty (30) days after receipt of said notice, weather permitting, the Town may exercise its rights to secure performance as is provided in Section 6 of this Agreement.

(f) No certificates of occupancy for the Property shall be issued until all improvements required by the Wiggins Land Development Code, including but not limited to streets, curbs, gutter, sidewalks, drainage improvements, water lines, sanitary sewer collection lines, storm sewer lines, and any other improvements constructed in relation to the Property have been completed and have been granted conditional acceptance.

3. Guarantee. (a) Concurrently with its execution of this Agreement, Owner shall submit to the Town an improvement guarantee (the "Guarantee") to ensure completion of the public improvements set forth in Exhibit B.

(b) The term of the Guarantee shall be for a period of time sufficient to cover the completion of construction of the public improvements and shall not be released until conditional acceptance of

the public improvements has been granted by the Town except as set forth in subsection (c), below. Said Guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on Exhibit C attached hereto and incorporated herein by reference. Said Guarantee, if a letter of credit, shall not expire during the winter season (November 1 - March 1). Said Guarantee shall include, but not be limited to, all public improvements.

(c) The total amount of the Guarantee shall be calculated as one hundred and twenty-five percent (125%) of the total estimated cost including labor and materials of all public improvements to be constructed as described on Exhibit B. At the time of conditional acceptance of all of the public improvements specified in this agreement, the Town shall reduce the amount of the required improvement guarantee to twenty-five percent (25%) of the certified statement of construction costs.

(d) Prior to conditional acceptance of all of the public improvements, Developer may request a reduction in the Guarantee for any portion of the public improvements that (i) have been completed and (ii) constitute a distinct system (i.e., water or sewer lines) or otherwise are reasonably ready to be placed into service independently, as determined by the Town. Such requests shall be made by written request from Developer to the Town, accompanied by a certified statement of construction costs for such improvements. If such improvements are satisfactory, as determined by the Town, then the Town shall reduce the required amount of the Guarantee by 100% of the value of such completed public improvements. Any reduction in the Guarantee pursuant to this Section 3(d) shall not constitute conditional acceptance of any public improvements required by this Agreement.

(d) At the time of final acceptance of the public improvements, the Town shall release the Guarantee provided no mechanics' liens have been filed with respect to the public improvements and the Owner is not otherwise in breach of this Agreement. If any mechanics' liens have been filed with respect to the public improvements, the Town may retain all or a portion of the Guarantee up to the amount of such liens. If Owner fails to have improvements finally accepted within two (2) years of the date of the issuance of conditional acceptance or any improvements are found not to conform to this Agreement, or to applicable Town standards and specifications, then Owner shall be in default of the Agreement and the Town may exercise its rights under Section 6 of this Agreement.

(e) In addition to any other remedies it may have, the Town may, at any time prior to final acceptance, draw on any Guarantee issued or provided pursuant to this Agreement if Owner fails to extend or replace any such Guarantee at least thirty (30) days prior to expiration of such Guarantee. If the Town draws on the Guarantee to correct deficiencies and complete improvements, any portion of said Guarantee not utilized in correcting the deficiencies and/or completing improvements shall be returned to Owner within thirty (30) days after said final acceptance. In the event that the Improvement Guarantee expires or the entity issuing the Guarantee becomes non-qualifying, or the cost of improvements and construction is reasonably determined by the Town to be greater than the amount of the Guarantee, then the Town shall furnish written notice to the Owner of the condition, along with supporting documentation, and within thirty (30) days of receipt of such notice the Owner shall provide the Town with a substituted qualifying improvement guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 3. If such an improvement guarantee is not submitted or maintained, then Owner is in default of this Agreement and is subject to the provisions of Section 6 of this Agreement, as well as the suspension of development activities by the Town including, but not limited to, the issuance of building permits and certificates of occupancy; provided, however, that no additional 30-day notice to cure under

Section 6 is required prior to the suspension of the issuance of building permits and certificates of occupancy.

4. Construction of Improvements.

(a) Rights-of-way, Easements and Permits. Before the Town may approve construction plans for the public improvements herein agreed upon, the Owner shall acquire at its own expense and convey to the Town, all necessary land, rights-of-way and easements required by the Town for the construction of the public improvements. All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by Special Warranty Deed in form and substance acceptable to the Town Attorney. All title documents shall be recorded by the Town at the Owner's expense. The Owner shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the Town Attorney.

(b) Trash, Debris, Mud. Owner agrees that during construction of the public improvements, the Owner shall take any and all steps necessary to control trash, debris and wind or water erosion. If the Town determines that said trash, debris or wind or water erosion causes damage or injury or creates a nuisance, Owner agrees to abate said nuisance and/or to correct any damage or injury within five (5) working days after notification by Town. If Owner does not abate said nuisance or if an emergency situation exists, to be determined by the Town in its sole discretion, the Town may abate the nuisance and/or correct any damage or injury without notice to Owner at Owner's expense. Owner also agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the Town. If Owner does not abate such mud or debris, or if an emergency exists, Town may abate the same at Owner's expense.

(c) Limitation of Construction Hours. The operation of construction equipment shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m. The Town Manager may, upon written application and for good cause, alter the hours of operation for a defined period of time.

(d) As-Built Drawings. The Owner shall provide the Town with certified Record Plan hard copies, and PDF scans, as well as AutoCAD .dwg or ESRI GIS electronic files upon completion of the construction of public improvements and other documents as required by the Town. These documents shall show "as-built" locations of such improvements.

5. Testing and Inspection. (a) Owner, at its own expense and prior to the permitting and installation of public infrastructure, shall provide a current letter or certificate from the manufacturer or a licensed expert that assures the infrastructure product continues to demonstrate structural compliance and durability. Owner shall employ, at its own expense, a licensed and registered testing company, previously approved by the Town in writing, to perform all testing of materials or construction that may be reasonably required by the Town, including but not limited to structural backfills, pipe bedding, trench backfills, subgrades, , and shall furnish copies of test results to the Town on a timely basis for Town review and approval prior to commencement or continuation of construction to which the testing is applicable. In addition, at all times during said construction the Town shall have access to inspect the materials and workmanship of said construction, determine the progress of the work, and determine compliance of the work with the approved plans and the Town's construction regulations, and all materials and work not conforming to such regulations, plans and

specifications shall be repaired or removed and replaced at Owner's expense so as to conform to such regulations, plans and specifications. The Public Works Supervisor shall be present to inspect the pressure leakage testing of potable water lines conducted by the Owner, and the Owner shall employ, at the Owner's expense, a testing laboratory acceptable to the Town to conduct bacteriological tests of the potable water lines after the Owner has disinfected said lines according to the Town's construction regulations. The Owner shall be responsible for, and shall promptly pay upon receipt of invoice therefore, all actual costs incurred by the Town for engineering, planning, inspection, testing, and legal services related to the improvements to be constructed under this Agreement or to the administration of this Agreement.

(b) All work shown on the approved public improvement plans shall be subject to inspection by the Public Works Supervisor or designee. Inspection by the Public Works Supervisor or designee shall not relieve the Owner from compliance with the approved plans and specifications or the Town's construction regulations. Inspection services requiring the presence of the Public Works Supervisor are provided Monday through Friday, except legal holidays, from 9:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of forty-eight (48) hours in advance with the Public Works Supervisor. No requests for after-hours inspection services shall be made. If any requests are denied, the work shall not proceed after the time requested until an inspection has been performed during the hours listed above.

6. Breach of Agreement. In the event that the Owner should fail to timely comply with any of the terms, conditions, covenants and undertakings of the Agreement, and if such noncompliance is not cured and brought into compliance within fifteen (15) days of written notice of breach of the Owner by the Town, unless the Town in writing and in its sole discretion designates a longer cure period, then the Town may exercise any one or more of the following rights and remedies: (a) immediately upon the expiration of such cure period draw upon the Guarantee and complete or cause to be completed the public improvements at Owner's expense; (b) restrict or revoke the issuance of any building permits, certificates of occupancy or other approvals or permits; (c) if the Town so chooses, complete the required public improvements with funds other than the Guarantee, in which event Owner shall reimburse the Town within thirty (30) days after receipt of written demand and supporting documentation from the Town; or (d) pursue any other remedy at law or in equity which may be appropriate under municipal, state or federal law, including but not limited to an action for specific performance. All costs incurred by the Town, including, but not limited to, administrative costs, court costs and reasonable attorney fees, in pursuit of any remedies due to the breach by the Owner shall be the responsibility of the Owner. The Town may deduct these costs from the Guarantee. All of the foregoing rights and remedies of the Town shall be cumulative, and the Town may exercise any one or all of such rights and remedies without prejudice to any other right or remedy available to the Town.

7. Recording of Agreement. The Town shall record this Agreement at Owner's expense in the office of the Clerk and Recorder, County of Morgan, State of Colorado, and the Town shall retain the recorded Agreement.

8. Binding Effect of Agreement. This Agreement shall run with the Property and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

9. Assignment, Delegation and Notice. Owner shall provide to the Town for approval written notice of any proposed transfer of the Property to any successor, as well as arrangements, if any, for assignment or delegation of the obligations hereunder. Owner and successor shall, until written Town approval of the proposed transfer of title and assignment or delegation of obligations, be jointly and severally liable for the obligations of Owner under this Agreement.

10. Modification and Waiver. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

11. Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses set forth above, or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon personal delivery or the date of deposit in the United States mail in compliance with this paragraph.

12. Title and Authority. Owner warrants to the Town that it is the record owner of the Property, and that he has full power and authority to enter into this Agreement.

13. Applicable Law; Venue; Severability. This Agreement is to be governed and construed according to the laws of the State of Colorado. Venue for any action related to this Agreement shall be in the district courts of Morgan County. In the event that upon request of Owner or any agent thereof, any provision of the Agreement is held to be violative of the municipal, state, or federal laws and hereby rendered unenforceable, the Town, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

14. Indemnity. Owner agrees to indemnify and hold harmless the Town and its officers, agents, and employees from and against all liability, claims, damages, losses, and expenses, including but not limited to, attorney fees arising out of, resulting from, or in any way connected with this Agreement or the right and obligations of the Owner hereunder.

15. Agreement Status After Completion. Upon completion of the public improvements and inspection approval thereof by the Town, and provided that no litigation or claim is pending relating to this Agreement, this Agreement shall no longer be in effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

TOWN OF WIGGINS, COLORADO

By: [Signature]
Mayor

ATTEST:

By: [Signature]
Interim Town Clerk



OWNER:
STUB'S GAS & OIL, INC.

By: _____

Title: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public

TOWN OF WIGGINS, COLORADO

By: [Signature]
Mayor

ATTEST:

By: _____
Interim Town Clerk

OWNER:
STUB'S GAS & OIL, INC.

By: [Signature]

Title: owner

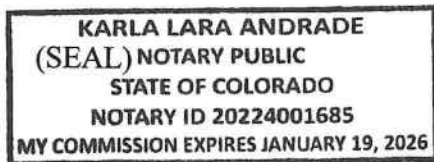
ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF Morgan)

The foregoing instrument was acknowledged before me this 21 day of September, 2023, by Steven Klecka as owner of Stubs gas and oil.

Witness my hand and official seal.

My commission expires: January 19, 2026



[Signature]
Notary Public

**EXHIBIT A
(Legal Description)**

PROPERTY DESCRIPTION:

A parcel of land being a portion of the East Half (E1/2) of Section Eleven (11), Township Three North (T.3N.), Range Sixty West (R.60W.) of the Sixth Principal Meridian (6th P.M.), County of Morgan, State of Colorado and being more particularly described as follows:

COMMENCING at the South Quarter corner of said Section 11 and assuming the West line of the E1/2 of said Section 11 as bearing North 01°01'47" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 5265.93 feet with all other bearings contained herein relative thereto;

THENCE North 01°01'47" West along the West line of the E1/2 of said Section 11 a distance of 1783.89 feet to the intersection of the West line of the E1/2 of said Section 11 and the North Right of Way line of State Highway No. 6 and to the POINT OF BEGINNING;

THENCE North 01°01'47" West along the West line of the E1/2 of said Section II a distance of 1660.36 feet to the Southerly Right of Way line of Interstate No. 76 as conveyed to the Department of Highways, State of Colorado in a Special Warranty Deed (SWD) recorded November 24, 1958 in Book 608 Page 484 of the Records of Morgan County;

The following Five (5) courses are along the Southerly lines of said Interstate No. 76: THENCE North 58°27'12" East a distance of 948.15 feet (SWD=947.0 feet) to a Point of Curvature;

THENCE along the arc of a curve concave to the Southeast a distance of 1205.36 feet (SWD=1204.9 feet), said curve has a Radius of 5580.00 feet, a Delta of 12°22'36" and is subtended by a Chord bearing North 64°38'30" East a distance of 1203.02 feet to the end point of said curve;

THENCE North 86°00'30" East along a line non-tangent to the aforesaid curve a distance of 590.90 feet (SWD=590.9 feet);

THENCE South 52°49'30" East a distance of 69.50 feet (SWD=69.5 feet);

THENCE South 07°18'00" East a distance of 272.46 feet to a line parallel with and 50.00 feet Westerly of, as measured at a right angle to the East line of the Northeast Quarter of Section 11; THENCE South 00°56'06" East along said parallel line a distance of 590.38 feet to the Northerly line of that parcel of land described in a Warranty Deed recorded March 14, 1938 in Book 365, Page 150 of the Records of Morgan County, said line being the Northerly Right of Way line of State Highway No. 6;

THENCE South 54°39'10" West along said Northerly Right of way line a distance of 1574.31 feet to the South line of the Northeast Quarter of Section 11, and to the Northerly line of that parcel of land described in a Warranty Deed recorded March 14, 1938 in Book 365, Page 148 of the Records of Morgan County, and also to a point being 217.00 feet Northwesterly of, as measured at a right angle to the centerline of the existing main line of the BNSF Railway THENCE South 54°42'26" West along said Northerly Right of way line a distance of 210.62 feet to the Southeast corner of that parcel of land described in a Quit Claim Deed (QCD) recorded October 25, 2007 as Reception No. 845936 of the Morgan County Records;

The following Three (3) courses are along the East, North and West lines of said QCD at Reception No. 845936:

THENCE North 01°06'01" West a distance of 344.45 feet (QCD=344.19 feet);

THENCE South 88°54'45" West a distance of 356.00 feet (QCD=356.00 feet);
THENCE South 01'06'01" East a distance of 586.40 feet (QCD=586.06 feet) to the Northerly
line of that parcel of land described in a Warranty Deed recorded March 14, 1938 in Book 365,
Page 148 of the Records of Morgan County, said line being the Northerly Right of Way line of
State Highway No. 6
THENCE South 54°42'26" West along said Northerly Right of Way line a distance of 915.31
feet to the West line of the E1/2 of said Section 11 and to the POINT OF BEGINNING.

Said described parcel of land contains 81.150 Acres, more or less (\pm), and is subject to any
rights-of-way or other easements of record or as now existing on said described parcel of land.

COST ESTIMATE OF PUBLIC IMPROVEMENTS

Roberts 81 Development, Wiggins, Colorado

PHASE 1 - UTILITIES

Water & Sanitary Sewer



TERRAMAX, INC.
4220 GOLF VISTA DRIVE
LOVELAND, COLORADO 80537

7/19/2023

Item No.	Description	Engr's Est'd Quantity	Unit	Unit Cost	Total Cost
	Mobilization	1	LS	\$5,000	\$5,000
	Sanitary Sewer Main - 8-inch PVC	1,990	LF	\$70.00	\$139,300
	4' dia Sanitary Sewer Manhole	7	EA	\$5,500	\$38,500
	Water Main - 8-inch PVC	3,360	LF	\$28	\$94,080
	Gate Valves - RSG x 8-inch	14	EA	\$2,500	\$35,000
	Fire Hydrant Assemblys	8	EA	\$5,000	\$40,000
	Pipe bedding	1,200	CY	\$25	\$30,000
	Additional Items:				
TOTAL					\$381,880

EXHIBIT C**IRREVOCABLE LETTER OF CREDIT**

Borrower: Stubbs Gas & Oil, Inc.
PO Box 309
Wiggins, CO 80654

Lender: Bank of Colorado
Fort Morgan Branch
629 Main St Suite 101
PO Box 1098
Fort Morgan, CO 80701
(970) 887-8497

Beneficiary: Town of Wiggins
304 Central Avenue
Wiggins, CO 80654

NO.: 6790004683

EXPIRATION DATE. This letter of credit shall expire upon the close of business on September 8, 2024 and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Four Hundred Seventy-seven Thousand Three Hundred Fifty & 00/100 Dollars (\$477,350.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

A certificate submitted by the Town Clerk for the Town of Wiggins, Colorado certifying as follows:

The undersigned, a duly appointed officer of the Town of Wiggins, Colorado (the "Town"), hereby certifies to Bank of Colorado (the "Bank"), with reference to the Bank's Irrevocable Letter of Credit No. 6790004683 (the "Letter of Credit"), issued by the Bank in favor of the Town, that:

- (1) The undersigned is the Town Clerk for the Town.
- (2) The Town is authorized to make a drawing under the Letter of Credit.
- (3) The amount which is due and payable from the Letter of Credit is \$ _____, and the amount of the sight draft accompanying this certificate does not exceed such amount.

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER BANK OF COLORADO IRREVOCABLE LETTER OF CREDIT NO. 6790004683 DATED SEPTEMBER 8, 2023," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

PERMITTED TRANSFEREES. The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording. If a demand for payment by Beneficiary hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, Lender shall give Beneficiary written notice, by reputable overnight mail delivery service to the address stated above, Attn: Town Manager, within three business days of presentation of any nonconforming draft that the purported negotiation was not effective in accordance with the terms and conditions of this Letter of Credit, stating with particularity the reasons therefore. A courtesy copy of such notice shall also be sent to Beneficiary by FAX (970-483-7364) or email (info@wigginsco.com) to the Town of Wiggins, but the failure to provide such notice shall not cause the notice sent by overnight mail delivery service to be ineffective. Lender will hold all documents for Beneficiary, or send them to Beneficiary, at Beneficiary's option and written instruction. Any such nonconforming demand may be corrected and resubmitted within three (3) business days of receipt of the Lender's mailed notice of nonconformity, so long as such demand is resubmitted prior to the Expiration Date. Lender is not required to provide notice of nonconformity to Beneficiary more than one time with respect to any draft.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Colorado.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored

if presented to Lender on or before the Expiration Date unless otherwise provided for above.

AUTOMATIC RENEWAL. The term of this Letter of Credit shall be renewed automatically one time for 60 days, until November 8, 2024, unless either Bank or Borrower shall deliver written notice of intent to terminate this Letter of Credit within thirty days prior to the Expiration Date.

Dated: September 8, 2023

LENDER:

BANK OF COLORADO

By: 
Cameron D. Armegost; Branch President


Darick Ohr; Loan officer

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures
------	---------------	--------------------	----------------------

LetterPro, Ver. 35.2.16.005 Copy, Financial USA Corporation 1987, 2003. All Rights Reserved. - CO - CV\app\CP\PL\CALLOC.FC TR-166401 FR-163 (A)

EXHIBIT 1 TO LETTER OF CREDIT
DRAFT FOR PAYMENT DRAWN UNDER

IRREVOCABLE LETTER OF CREDIT NO. _____
DATE: _____, 20__.

PAY TO: The account of the Town of Wiggins, Colorado, Account
No. _____, at _____,
Colorado, THE SUM OF _____ DOLLARS
(\$ _____).

TOWN OF WIGGINS, COLORADO

By: _____
Town Clerk

EXHIBIT 2 TO LETTER OF CREDIT

To: _____

CERTIFICATE FOR PAYMENT

The undersigned, a duly appointed officer of the Town of Wiggins, Colorado (the "Town"), hereby certifies to _____ (the "Bank"), with reference to the Bank's Irrevocable Letter of Credit No. _____ (the "Letter of Credit"), issued by the Bank in favor of the Town, that:

- (1) The undersigned is the Town Clerk for the Town.
- (2) The Town is authorized to make a drawing under the Letter of Credit.
- (3) The amount which is due and payable from the Letter of Credit is \$ _____, and the amount of the sight draft accompanying this certificate does not exceed such amount.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of the _____ day of _____, 20__.

TOWN OF WIGGINS, COLORADO

By: _____
Town Clerk



STAFF SUMMARY

Board of Trustees Special Meeting August 14, 2024

DATE: August 9, 2024

AGEND ITEM NUMBER: 5

TOPIC: Consideration of Releasing a Letter of Credit Agreement for Kiowa Park Outlot E

STAFF MEMBER RESPONSIBLE: Hope Becker, Planning & Zoning Administrator

BACKGROUND:

Kiowa Park Subdivision's conducted its final acceptance for the Subdivision's Phase 3C on March 24th, 2023. It was determined during this walk through that the vegetation in Outlot E was not successfully growing. The Town took final acceptance of the final phase with the exception of Outlot E. A new Letter Agreement was created between the Town and Jay Stoner of LDI on August 28, 2024 hold \$20,000 financial guarantee to unsure that vegetation, trees, and irrigation systems were planted and installed on or before October 31, 2023.

SUMMARY:

Staff confirmed with Public Works that irrigation systems were acquired, two trees were planted, and the natural grass vegetation is taking growing in adequately. It was determined that LDI has not been provided an invoice for the trees or irrigation system and have submitted said invoice for cost reimbursement. The resolution presented to the Board of Trustees states the payment of invoice is a condition of the final release of credit.

FISCAL IMPACT:

Approving this Resolution has no negative impact on the Town's adopted budget.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

Approving this Final Plat application maintains good relationships Jay Stoner and future development.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES:

- The Board of Trustees may approve the Resolution staff has provided for their consideration.

- The Board of Trustees may approve the Resolution with additional conditions.
- The Board of Trustees may continue the agenda item to the next Board of Trustee meeting and request that staff or the applicant provide additional information to be brought forth.
- The Board of Trustees may not approve the resolution.

MOTION FOR APPROVAL:

I make the motion to adopt Resolution 31-2024 – A Resolution Granting Final Acceptance of Public Improvements Constructed for the Kiowa Park Subdivision

ACTION REQUIRED:

Motion, Second, Roll-Call, Vote.

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

**TOWN OF WIGGINS, COLORADO
RESOLUTION NO. 31-2024**

A RESOLUTION GRANTING FINAL ACCEPTANCE OF PUBLIC IMPROVEMENTS CONSTRUCTED FOR THE KIOWA PARK SUBDIVISION

WHEREAS, the Town and Kiowa Park, LLC entered into a Letter Agreement dated August 28, 2023, which Letter Agreement required Kiowa Park to reseed, plant trees, and install a irrigation system for the vegetation on Outlot E of the Kiowa Park Subdivision; and

WHEREAS, in accordance with the Letter Agreement, Kiowa Park posted an Improvement Guarantee for those improvements; and

WHEREAS, the Town has conducted a Final Acceptance inspection and all improvements have been completed with no outstanding issues needed to be resolved.

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

Section 1. Pursuant to the Letter Agreement between the Town and the Kiowa Park, the Board of Trustees hereby grants Final Acceptance of the improvements constructed for Outlot E of the Kiowa Park Subdivision.

Section 2. Further the Board of Trustees hereby authorizes release of the remaining Improvement Guarantee subject to the following condition:
- The outstanding invoice for the trees, vegetation, and irrigation system is paid in full as agreed upon per the Letter Agreement.

INTRODUCED, READ, and ADOPTED this 14th day of August, 2024.

TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Nichole Seiber, Town Clerk



August 28, 2023

Mr. Jay Stoner, President
Kiowa Park LLC/LDI, Inc.
5655 Bridlespur Ridge Place
Colorado Springs, CO 80918

RE: Letter Agreement – Kiowa Park Subdivision, Wiggins, Colorado
Revegetation of Outlot E - Corner Coyote Ln. and Wildcat Pkwy

Dear Mr. Stoner,

This Letter Agreement is to document our understanding and agreement regarding the revegetation of Outlot E, Kiowa Park Planned Development Subdivision, Filing No, 3 (the "Subdivision"), located on the south side of the corner of Coyote Lane and Wildcat Parkway as shown in the attached Figure 1. The Town has granted final acceptance for all the public improvements required by Subdivision Agreement for the Subdivision, except for the revegetation. The Town is willing to release the letter of credit required by the Subdivision Agreement, subject to the following conditions:

1. Kiowa Park LLC/LDI agrees to have High Plains Bank put a hold on \$20,000 of cash in the Kiowa Park Bank account (the "Guarantee"), which such amount may be drawn on by the Town of Wiggins as set in Paragraph 8 forth below. The Guarantee shall not be reduced until the Town grants final acceptance of the Improvements as provided in Paragraph 6.
2. Wiggins will return Letter of Credit associated with Loan #34312010 to High Plains Bank.
3. On or before October 31, 2023, Kiowa Park LLC/LDI will seed the area with water wise, low growth/dense grass, i.e., buffalo grass. Town approval of grass seed mix is required.
4. On or before October 31, 2023, Kiowa Park LLC/LDI will plant two trees, one on each side of the path connecting the side walk to the perimeter trail. Town approval of the tree species and locations is required. The Town will be responsible for watering the two trees.

Town of Wiggins
304 E Central Avenue :: Wiggins, CO 80654
970-483-6161 :: townofwiggins.colorado.gov

5. Kiowa Park LLC/LDI will install, maintain and use a temporary above ground irrigation system until the grass is established as determined by the Town of Wiggins. Kiowa Park LLC/LDI will pay the cost of providing water.
6. The improvements described in Paragraphs 3 – 5 are hereinafter referred to as the Improvements.
7. Kiowa Park LLC/LDI is responsible for all seeding and maintenance activities (watering, weed mitigation, mowing, etc.) on Outlot E until sufficient growth of the vegetation has occurred and the Town gives final acceptance of the Improvements.
8. If Kiowa Park LLC/LDI fails to timely comply with any of the terms and conditions of this Letter Agreement, and if such noncompliance is not cured within 30 days of written notice by the Town, the Town may draw upon the Guarantee to complete, repair or maintain the Improvements. If the Guarantee is insufficient or unavailable, the Town may complete such work at Kiowa Park LLC/LDI's expense who shall reimburse the Town for such costs within 30 days of written notice.
9. Upon Final Acceptance of the Improvements, the Town shall return the remaining Guarantee to Kiowa Park LLC/LDI.

Please indicate your approval and acceptance of the foregoing terms and conditions by signing where indicated below and returning a signed letter to the Town.

If you have any questions, please contact me.


Sincerely,



 Tom Acre, Town Manager

AGREED AND ACCEPTED:

KIOWA PARK, LLC

By: 
 Printed Name: Jay D Stoner
 Title: Managing Member

TOWN OF WIGGINS
 304 CENTRAL AVE
 WIGGINS, CO 80654
 (970) 483-6161

Invoice

8/7/2024

BILL TO:

Kiowa Park, LLC
 Land Developers, Inc
 5655 Bridlespur Ridge Place
 Colorado Springs, CO 80918

Description	QTY	Unit Price	Total
Landscaping Trees	2	\$ 349.50	\$ 699.00
Potting Soil	2	\$ 7.49	\$ 14.98
Valves	4	\$ 30.00	\$ 120.00
1"POLY PIPE 300'	2	\$ 117.00	\$ 234.00
Bag-Drip Heads	10/bag	\$ 12.99	\$ 12.99
1/2 day - trencher rental	1/2 day	\$ 130.00	\$ 130.00
Labor			\$ 1,000.00
Sprinkler Heads & Fittings		\$ 25.00	\$ 300.00
Timer	2	\$ 69.99	\$ 139.98
Portion of electrical work	1	\$ 500.00	\$ 500.00
Valve Boxes	2	\$ 69.99	\$ 139.98
Manifold Labor	2	\$ 43.99	\$ 88.00
Manifold Labor	4	\$ 5.99	\$ 23.96
Manifold Labor	4	\$ 8.99	\$ 35.96
Total			\$ 3,438.85

Thank you for your business!



STAFF SUMMARY

Board of Trustees Special Meeting August 14, 2024

DATE: August 12, 2024

AGENDA ITEM NUMBER: 6

TOPIC: Resolution 32-2024 – A Resolution Approving an Intergovernmental Agreement Between the Town of Wiggins and the Morgan County Clerk and Recorder Regarding the Conduct of the Administration of the November 5, 2024 General Mail Ballot Election

Staff Member Responsible: Nichole Seiber, Town Clerk/Trustee

BACKGROUND:

This Intergovernmental Agreement is made by and between the Board of County Commissioners of the County of Morgan, State of Colorado, on behalf of the Morgan County Clerk and Recorder and the Town of Wiggins. The Town of Wiggins has chosen to coordinate with Morgan County to combine all ballot issues for easier voting purposes for the Town’s election on November 5, 2024. This government agreement will save money on the Town Budget. The State of Colorado encourages the Town to consolidate our elections as well.

SUMMARY:

The Town of Wiggins has six seats available for re-election, which include the Mayor’s seat, three Board of Trustee seats for 4-year terms and two Board of Trustee seats for two-year terms. In order to fill the vacancies at the November 5, 2024 election, the election must be coordinated with Morgan County and an agreement made between the county and the Town regarding such election.

FISCAL IMPACT:

Approving this Resolution has no negative impact on the Town’s adopted budget. The contract is within the current 2024 budget parameters.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

The Town of Wiggins encourages cost savings to the tax payers. This will save staff time and money for the Town of Wiggins.

OPTIONS AVAILABLE TO THE BOARD OF TRUSTEES:

The Board of Trustees may approve the Resolution, approve the Resolution with modification, or not approve the Resolution.

MOTION FOR APPROVAL:

I make the motion to approve Resolution 32-2024 – A Resolution Approving an Intergovernmental Agreement Between the Town of Wiggins and the Morgan County Clerk and Recorder

Regarding the Conduct of the Administration of the November 5, 2024 General Mail Ballot Election.

ACTION REQUESTED:

Motion, Second, Roll-Call Vote.

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

RESOLUTION NO. 32-2024**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF WIGGINS AND THE MORGAN COUNTY CLERK AND RECORDER REGARDING THE CONDUCT OF AND ADMINISTRATION OF THE NOVEMBER 5, 2024 GENERAL MAIL BALLOT ELECTION**

WHEREAS, the Morgan County Clerk and Recorder will conduct a general election on November 5, 2024, as a coordinated mail ballot election pursuant to the Uniform Election Code and, in particular, C.R.S. Section 1-7-116; and

WHEREAS, pursuant to Section 31.04 of the Wiggins Municipal Code, the Town will conduct its regular municipal election on November 5, 2024 and desires to conduct it as a coordinated election with the County; and

WHEREAS, the attached Intergovernmental Agreement provides for the conduct and financing of such election.

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

Section 1. The proposed Intergovernmental Agreement Regarding the Conduct and Administration of the November 5, 2024 General Mail Ballot Election (“Intergovernmental Agreement”), a copy of which is attached hereto and incorporated herein by this reference, is hereby approved.

Section 2. The Town shall conduct its regular election as a coordinated election with the County on November 5, 2024. Pursuant to C.R.S. Section 31-10-102.7, the Town will utilize the requirements and procedures of the Uniform Election Code of 1992, Articles 1 to 13 of Title 1, C.R.S., as amended, in lieu of the Colorado Municipal Code of 1965, Article 10 of Title 31, C.R.S., as amended. The Town Clerk is hereby appointed as the designated election official of the Town for purposes of performing acts required or permitted by law in connection with the election and in accordance with the terms of the Intergovernmental Agreement.

Section 3. The Mayor and Town Clerk are hereby authorized to execute the Intergovernmental Agreement on behalf of the Town of Wiggins, except that such persons are hereby further authorized to negotiate and approve such revisions to the Intergovernmental Agreement as are determined necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Intergovernmental Agreement are not altered.

INTRODUCED, READ AND ADOPTED this 14th day of August, 2024.

TOWN OF WIGGINS, COLORADO

Chris Franzen, Mayor

ATTEST:

Nichole Seiber, Town Clerk

INTERGOVERNMENTAL AGREEMENT

BETWEEN

MORGAN COUNTY CLERK AND RECORDER

AND

TOWN OF WIGGINS

Regarding the Conduct and Administration of the

**November 5, 2024
GENERAL MAIL BALLOT ELECTION**

**Prepared by:
Kevin Strauch
Morgan County Clerk and Recorder
231 Ensign St.
Fort Morgan, Colorado 80701
970-542-3521**

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN TOWN OF WIGGINS
AND THE MORGAN COUNTY CLERK AND RECORDER FOR THE CONDUCT AND
ADMINISTRATION OF THE 2024 GENERAL ELECTION TO BE HELD
NOVEMBER 5th, 2024**

This Intergovernmental Agreement for coordinated election (“IGA”) is made and entered into by and between Town of Wiggins (the “Jurisdiction”) and the County Clerk and Recorder for Morgan County, Colorado (the “County Clerk”), together “the Parties.”

1. RECITALS AND PURPOSES

1.1 As provided by law, the County Clerk shall conduct an election on behalf of the Jurisdiction, whose election is part of the coordinated election;

1.2 The Jurisdiction is a political subdivision that is authorized to hold an election as provided by law;

1.3 The election to be held on November 5, 2024 (the “Election”) shall be conducted pursuant to the Uniform Election Code of 1992 § 1-13.5-101, C.R.S., *et seq.* (“the Code”) and the Rules and Regulations of the Colorado Secretary of State 8 CCR 1505-1, *et seq.* “Rules Concerning Elections” (“the Rules”) as a “mail ballot election” as defined under § 1-7.5-102, C.R.S.;

1.4 Pursuant to § 1-7-116(2), C.R.S., the County Clerk and the Jurisdiction are required to enter into an agreement for the administration of their respective duties and sharing of the actual costs related to the Election;

1.5 The County Clerk and the Jurisdiction have determined that it is in the best interests of the Jurisdiction, and its inhabitants and non-resident property owners, to cooperate and contract for the Election upon the terms and conditions contained in this IGA; and

1.6 The purpose of this IGA is to allocate responsibilities between the County Clerk and the Jurisdiction for the preparation and conduct of the Election and provide for a reasonable sharing of the actual costs of the Election among the County, the Jurisdiction and other participating political subdivisions.

For and in consideration of the mutual covenants and promises in this IGA, the sufficiency of which is acknowledged, the Parties agree as follows:

2. GENERAL MATTERS

2.1 **Chief Designated Election Official.** The County Clerk shall act as the Chief Designated Election Official, hereafter "County Clerk," in accordance with § 1-1-110, C.R.S. and will be responsible for the administration of the Election as detailed in statutes, the Code, and the Rules.

2.2 **Designated Election Official.** Morgan County Clerk and Recorder Kevin Strauch will be the primary liaison and contact for the County Clerk. The Jurisdiction designates **Nichole Seiber** as its "Designated Election Official" (DEO) who shall act as the primary liaison between the Jurisdiction and the County Clerk and who shall have primary responsibility for the management and performance of the Jurisdiction's obligations under this IGA. Nothing in this IGA relieves the County Clerk or the Jurisdiction's Governing Board from their official responsibilities for the conduct or in the holding of the Election as required by law.

2.3 **Term.** The term of this IGA shall be from the date of signing through December 30, 2024.

3. RESPONSIBILITIES OF THE COUNTY CLERK

3.1 **Initial ballot layout.** Upon receipt of the certified ballot text provided by the Jurisdiction pursuant to Section 4.2 below, the County Clerk will create the layout of the text of the ballot in a format that complies with the Code. The ballot text must be satisfactory to the County Clerk. Furthermore, no content changes by the Jurisdiction shall be allowed after the September 6, 2024 certification of the ballot, without the approval or direction of the County Clerk. The County Clerk will provide the Jurisdiction with a copy of the draft ballot for the Jurisdiction's review along with any instructions for modifications to the ballot layout and the time period within which the Jurisdiction must return the modified ballot to the County Clerk. If modifications are made by the Jurisdiction, the County Clerk will review the changes upon receipt from the Jurisdiction of the modified ballot and notify the Jurisdiction that the ballot is approved or return the ballot for further modifications and deadlines.

3.2 **Final ballot layout.** Once the Jurisdiction has made all changes to the ballot layout as required by the County Clerk and the ballot is in final draft form, the County Clerk will lay out the ballot text and submit it to the Jurisdiction for final review, proofreading, and approval. The Jurisdiction's DEO shall have **no more than two (2) hours** from the time the County Clerk sends the final ballot proofs to perform the final review and proofread. The County Clerk is not responsible for ensuring that the final ballot text complies with the requirements of TABOR or any other constitutional or statutory requirement related to the text of ballot language.

3.3 **Ballot printing and mailing.** The County Clerk will contract with a vendor to prepare and print the ballots; prepare a mail ballot packet for each registered elector within the Jurisdiction; address a mail ballot packet to each registered elector within the Jurisdiction; and

mail the ballots between 22 days and 18 days before Election Day, or between October 11, 2024 and October 18, 2024. In cooperation and coordination with the County Clerk, the vendor shall perform the printing, preparation of the ballots for mailing, and the mailing of the ballots.

3.4 ***Voter Service and Polling Centers.*** The County Clerk shall provide Voter Service and Polling Centers from October 21, 2024 through Election Day. The County Clerk will hire and train staff and judges to operate Voter Service and Polling Centers according to § 1-7.5-107(4.5)(a)(I), C.R.S.

3.5 ***Additional ballots.*** In addition to the mail ballots printed and mailed by the vendor as specified in subsection 3.3, the County Clerk will provide regular, Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and provisional ballots to registered electors in the manner and method required by the Code.

3.6 ***Mail ballots.*** In cooperation with the vendor, the County Clerk will ensure that the mail ballot packets contain the materials required by the Code, including voter instructions; an inner verification/privacy return envelope; and the outer/mail envelope containing the appropriate postage, Official Election logo, and indicia for Return Service Requested.

3.7 ***Ballot security.*** The County Clerk will track ballot inventory and provide security for all ballots as required by the Code.

3.8 ***Election Judges.*** The County Clerk will appoint, train, provide written and/or online materials to and pay a sufficient number of qualified election judges to receive and process voted ballots.

3.9 ***Election Notices.*** The County Clerk shall publish all Election notices required by the Code. The Jurisdiction shall not publish any notice related to the Election without first obtaining the approval of the County Clerk. To request approval to publish a notice, the Jurisdiction shall provide the County Clerk with all relevant information related to the proposed publication, including a copy of the proposed notice, at least one (1) week prior to the Jurisdiction's deadline for submitting the proposed notice to the publisher. The Jurisdiction shall bear full responsibility for any Election notices published without the County Clerk's approval and shall comply with all instructions issued by the County Clerk to remedy any incorrect or improper notices.

3.10 ***TABOR Notice.*** If applicable, the County Clerk, through a vendor, will distribute to all Morgan County registered electors' households the printed TABOR Notice submitted by the Jurisdiction along with those of other jurisdictions. The County Clerk may determine the order of the TABOR Notice submitted by the Jurisdiction and those of other jurisdictions to be included in the TABOR Notice Package provided. However, the materials supplied by the Jurisdiction shall be kept together as a group and in the order supplied by the Jurisdiction. The cost for the printing and mailing of the TABOR Notice Package shall be shared on a prorated

basis as further described in Section 5 below. The County Clerk is not responsible for ensuring that the TABOR Notice complies with the requirements of TABOR or any other constitutional or statutory requirement relating to the TABOR Notice.

3.11 **Testing.** The County Clerk will perform Logic and Accuracy Testing of the electronic vote counting equipment as required by the Code.

3.12 **Tally.** The County Clerk will provide for the counting and tallying of ballots, including any recounts required by law. The County Clerk will release initial election returns after 7:00 p.m. on the date of the Election. The unofficial results will be published to the State's Election Night Reporting and Morgan County's site throughout election night. The County Clerk will count and tally valid cured and provisional ballots on or before 5:00 pm on November 14, 2024.

3.13 **Certification of results.** Jurisdictions will be issued a certified statement of results by November 27, 2024.

4. RESPONSIBILITIES OF JURISDICTION

4.1 **Authorization to Hold Election.** The Jurisdiction must provide the County Clerk along with a signed copy of this IGA a certified copy of the ordinance or resolution stating that the Jurisdiction will participate in the Election in accordance with the terms and conditions of this IGA. The ordinance or resolution must authorize the presiding officer of the Jurisdiction or other designated person to execute this IGA.

4.2 **Boundaries of Jurisdiction.** If any annexations to the Jurisdiction have occurred between November 1, 2019 and the date of the signing of this IGA, the Jurisdiction is responsible for informing the County Clerk in writing by the date of the signing of this IGA.

4.3 **Ballot content and layout.** No later than September 6, 2024, the DEO shall certify the ballot order and content for the Jurisdiction and deliver the certified ballot layout to the County Clerk. The ballot layout shall be in a form acceptable to the County Clerk. Ballot content layout shall not include any graphs, tables, charts, or diagrams. The ballot order and content shall include the names and office of each candidate for whom a petition has been filed with the Election Officer and any ballot measure(s) the Jurisdiction has certified. The Jurisdiction shall be solely responsible for the accuracy of the information contained in the certificate and ballot content. The Jurisdiction shall make any modifications to the ballot layout requested by the County Clerk. The County Clerk will correct errors as specified in § 1-5-412, C.R.S. at the Jurisdiction's expense. The County Clerk assigns the ballot measure(s) number(s).

4.4 **Spanish Language Ballots.** Morgan County is required to provide Spanish translations under §1-5-905 C.R.S. Jurisdictions must provide ballot content in English and Spanish. The

Spanish translation is expected to be linguistically accurate, culturally appropriate, and consistent with provided English ballot content.

4.5 ***Audio for visually impaired.*** No later than the Jurisdiction's submission of the ballot layout to the County Clerk, the Jurisdiction shall confirm that each candidate has provided a clearly spoken recording of the candidate's name. This requirement aids the County Clerk in programming the audio component of the electromechanical voting equipment for the Election. This recording can be submitted by calling (970) 542-3500 x1416 and leaving a message.

4.6 ***TABOR Notice.*** The Jurisdiction shall provide to the County Clerk all required TABOR Notices concerning ballot measure(s) in the manner required by Article X, Section 20 of the Colorado State Constitution by noon on September 23, 2024. The submission will include the ballot title, text, and fiscal history or any other required wording for the TABOR Notice. The submission date will expedite print layout and review of the TABOR Notice. The Jurisdiction shall be solely responsible for the accuracy of the information contained in the TABOR Notice.

4.7 ***Final layout.*** The Jurisdiction shall timely make any modification to the ballot layout requested by the County Clerk. The Jurisdiction shall review and proofread and approve the layout, format, and text of the final draft form of the Jurisdiction's official ballot and, if applicable, TABOR Notice **within two (2) hours** of the County Clerk providing the Jurisdiction with the copy to be proofed.

4.8 ***Testing.*** The Jurisdiction may be asked to provide a person to participate in Logic and Accuracy Tests, which will be scheduled during the last week of September through the first week of October.

4.9 ***Cancellation of Election by the Jurisdiction.*** If the Jurisdiction resolves not to hold the election or to withdraw a ballot measure(s), the Jurisdiction shall immediately provide notice of such action to the County Clerk. Initial notice to the County Clerk must be in writing. If by email confirmation must be received from the County Clerk or his/her designee. The Jurisdiction shall provide proof to the County Clerk of the Jurisdiction's formal action canceling the election or withdrawing a ballot measure(s) as soon as practicable after the Jurisdiction's formal action. The Jurisdiction shall promptly pay the County Clerk the full actual costs relating to the Jurisdiction's election, both before and after the County Clerk's receipt of such notice. The Jurisdiction shall provide notice by publication in a newspaper(s) of general circulation within the Jurisdiction of such cancellation of the election or withdrawal of ballot measure(s). The County Clerk shall post notice of the cancellation or withdrawal of ballot measure(s) in the office of the County Clerk, and the DEO shall post notice of the cancellation at buildings of the Jurisdiction. The Jurisdiction shall not cancel the election after the 25th day prior to the Election as provided in § 1-5-208, C.R.S.

4.10 ***Election Day Contacts.*** The DEO shall be available on Election Day, November 5th, 2024 from seven o'clock a.m. to seven o'clock p.m. in order to provide support to the Clerk and Recorder's Office.

4.11 ***Canvass.*** The Jurisdiction may be asked to provide a representative who is a registered voter in the Jurisdiction to serve as a member of the Board of Canvassers who certify the Election. If the Jurisdiction requires an Abstract of Votes Cast separate from the Canvass documents, the Jurisdiction will provide the County Clerk with the required forms prior to the date by which the Board of Canvassers meets.

4.12 PROVISIONS UNIQUE TO SPECIAL DISTRICTS AND OTHER COORDINATING DISTRICTS

4.12.1 ***Boundaries of Jurisdiction.*** Jurisdiction shall obtain, then certify to the County Clerk by September 12, 2024 at noon all addresses in the County Clerk's address library for the Jurisdiction. Any changes to the County Clerk's address library after this date will increase costs.

4.12.2 ***Non-resident property owners entitled to vote.*** Where non-resident property owners may be entitled to vote in the Jurisdiction's election, the DEO must submit a certified list of such non-resident property owners to the County Clerk no later than September 20, 2024. All such property owner lists must be in Microsoft Excel or CSV (Comma-separated values) file. The County Clerk will send mail ballots to the non-resident property owners who return to the County Clerk the signed affirmation establishing their eligibility.

5. PAYMENT

5.1 ***Intent.*** This section addresses the reasonable sharing of the actual cost of the Election among the County and the jurisdictions participating in the Election.

5.2 ***Responsibility for costs.*** The Jurisdiction shall not be responsible for sharing any portion of the usual costs of maintaining the office of the County Clerk, including but not limited to, overhead costs and personal service costs of permanent employees, except for such costs that are shown to be directly attributable to conducting the Election on behalf of the Jurisdiction.

5.3 ***Invoice.*** The Jurisdiction shall pay the County Clerk the Jurisdiction's share of the County Clerk's costs and expenses in administering the Election within thirty (30) days of receiving an invoice from the County Clerk. If the invoice is not timely paid by the Jurisdiction, the County Clerk, in his or her discretion, may charge a late fee not to exceed 1% of the total invoice per month.

5.4 ***Cost Allocation.*** The County Clerk will determine the Jurisdiction's invoice amount by allocating to all participants in the ballot a share of the costs specific to the administration of the election as provided by law. If the Jurisdiction is placing a ballot question that qualifies as a

TABOR election, a portion of the TABOR Notice publication and mailing costs will also be billed for in the invoice. If the Jurisdiction is placing a ballot measure that requires additional costs specific to that Jurisdiction’s ballot measure, the Jurisdiction will also be billed for that portion of the costs in the invoice. The Jurisdiction agrees to pay the invoice within 30 days of receipt unless the County Clerk agrees to a longer period of time. Examples of previous costs are available upon request.

5.5 Disputes. The Parties shall attempt to resolve disputes about the invoice or payment of the invoice. If the Parties cannot reach a resolution and in the event of litigation, jurisdiction and venue shall be in Morgan County District or Morgan County Court, depending on the amount.

6. MISCELLANEOUS

6.1 Notices to Parties. Notices required to be given by this IGA are deemed to have been received and to be effective: (A) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (B) immediately upon hand delivery; or (C) immediately upon receipt of confirmation that a fax or email was received to the fax numbers or email addresses of the Parties as set forth below or to such party(ies) or address(es) as may hereafter be designated in writing.

To County Clerk:

Kevin Strauch
231 Ensign St
PO Box 1399
Fort Morgan, CO 80701
Fax: (970) 542-3553
E-mail: votemorganc@co.morgan.co.us

To DEO:

Name: _____
Address: _____

Fax: _____
E-mail: _____

6.2 Amendment. This IGA may be amended only in writing and following the same formality as the execution of the initial IGA.

6.3 Integration. The Parties acknowledge that this IGA constitutes the sole agreement between the Parties relating to the subject matter of this IGA and that no party is relying upon any oral representation made by another party or employee, agent or officer of that party. Any prior agreements, promises, negotiations, or representations not expressly set forth in this IGA are of no force and effect. This IGA fully supersedes any previous “Intergovernmental Agreement” between the Parties.

6.4 Waiver of Claims. The Jurisdiction has familiarized itself with the election process used by the County Clerk and waives any claims against the County Clerk related to the County

Clerk's processing or administration of the Election except as specified in paragraph 6.5 below and claims arising out of willful and wanton acts of the County Clerk.

6.5 **Limitation of Liability.** If a lawsuit is filed challenging the validity of the Jurisdiction's election, the Jurisdiction shall provide prompt notice to the County Clerk of such a lawsuit. If the County Clerk chooses to intervene and defend its position, the Jurisdiction will support such intervention and cooperate in the defense of any such claims. If, as a result of a lawsuit against the Jurisdiction or against the Jurisdiction and other defendants by a third party, a court of competent jurisdiction finds that the Jurisdiction's election was void or otherwise fatally flawed due solely to a cause arising from the negligence of the County Clerk, then the County Clerk's sole responsibility and liability shall be to refund to the Jurisdiction all amounts paid to the County Clerk under Section 5 above. The County Clerk shall have no other responsibility for or liability to any parties of or third parties in connection with the lawsuit, including, but not limited to, any judgment, damages, costs, or fees.

6.6 **Conflicts of this IGA with the Law, Impairment.** If any provision in this IGA conflicts with the law, this IGA shall be modified to conform to such law or resolution.

6.7 **Time of the Essence.** Time is of the essence in the performance of the work under this IGA. The statutory time requirements of the Code shall apply to completion of the tasks required by this IGA, unless earlier deadlines are required by this IGA.

6.8 **Good Faith.** The Parties shall implement this IGA in good faith, including acting in good faith in all matters that require joint or coordinated action.


6.9 **Third Party Beneficiary.** The enforcement of the terms and conditions of this IGA and all rights of action relating to such enforcement shall be strictly reserved to the County Clerk and the Jurisdiction, and nothing contained in this IGA shall give or allow any claim or right of action by any other or third person. It is the express intent of the Parties that any person receiving services or benefits under this IGA shall be deemed an incidental beneficiary.

6.10 **No Waiver.** No waiver of any of the provisions of this IGA constitutes a waiver of any other of the provisions of this IGA, and no such waiver constitutes a continuing waiver, unless otherwise expressly provided in this IGA, nor will the waiver of any default under this IGA be deemed a waiver of any subsequent default.

6.11 **Appropriation.** The Parties' obligations under this IGA outside the current fiscal year are conditioned on the prior appropriation of good and sufficient funds for such purpose, pursuant to § 29-1-110, C.R.S. The Parties affirmatively assert that each has budgeted sufficient funds for its obligations under this IGA for the year it was executed.

IN WITNESS WHEREOF, the Parties have signed this IGA.

Morgan County

 7/30/24

Kevin Strauch Date
Morgan County Clerk and Recorder

Jurisdiction

Designated Election Official Date

Printed Name: _____

Title: _____

Telephone: _____