

**AGENDA**

**for the Board of Trustees of the Town of Fairplay, Colorado  
Monday, July 18, 2016 at 6:00 p.m. at the Fairplay Town Hall Meeting Room  
901 Main Street, Fairplay, Colorado**

- I. CALL TO ORDER WORK SESSION @ 6:00 P.M. – Foss Smith, RE-2 School District President**
- II. CALL TO ORDER REGULAR MEETING @ 7:00 P.M.**
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**
- V. APPROVAL OF AGENDA**
- VI. CONSENT AGENDA** *(The Consent Agenda is intended to allow the Board to spend its time on more complex items. These items are generally perceived as non-controversial and can be approved by a single motion. The public or the Board Members may ask that an item be removed from the Consent Agenda for individual consideration.)*
  - A. APPROVAL OF EXPENDITURES – Approval of bills of various Town Funds in the amount of \$79,983.48.**
- VII. CITIZEN COMMENTS**
- VIII. PUBLIC HEARINGS**
  - A. Should the Board, acting as the Board of Adjustment, Approve Adoption of Resolution No. 17, series of 2016, entitled, "A RESOLUTION APPROVING THE APPLICATION FOR A SIDE AND REAR YARD SETBACK VARIANCE AT CERTAIN REAL PROPERTY COMMONLY KNOWN AND NUMBERED AS 412 CASTELLO AVENUE, FAIRPLAY, COLORADO."?**
- IX. NEW BUSINESS**
  - A. Presentation and acceptance of 2015 Audits - Tim Mayberry.**
  - B. Should the Board Approve Adoption of Resolution No. 18, 2016, entitled, "A RESOLUTION AUTHORIZING THE NEGOTIATION, EXECUTION, AND DELIVERY OF EQUIPMENT LEASE/PURCHASE AGREEMENT IN THE PRINCIPAL AMOUNT OF \$225,000 BETWEEN TOWN OF FAIRPLAY AND NBH BANK, PROVIDING LEASE PAYMENTS FROM LEGALLY AVAILABLE FUNDS; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH."?**
  - C. Other new business**
- X. UNFINISHED BUSINESS**
  - A. Other Discussion Items**
- XI. MAYOR AND TRUSTEE REPORTS**
- XII. STAFF AND COMMITTEE REPORTS**
- XIII. ADJOURNMENT**

**Upcoming Meetings/Important Dates:**

TGIFairplay Free Concert (featuring Ronnie Raygun & the Big Eighties Band)	July 29, 2016 @ 6 p.m.
Burro Days	July 30-31, 2016
Board of Trustees Meeting	August 1, 2016 @ 7 p.m.
Silverheels 100 Endurance Run	August 6-7, 2016
Living History Days at So Park City Museum	August 13-14, 2016
Fairplay Bead & Fiber Show	August 13-14, 2016
Board of Trustees Meeting	August 15, 2016 @ 7 p.m.
Ed Snell Memorial Run/Walk	August 20, 2016
TGIFairplay Free Concert with Ice Cream & Fresh Peaches (featuring Hazel Miller Band)	August 26, 2016 @ 6 p.m.

**This Agenda May Be Amended.**

*Posted at Fairplay Town Hall, Fairplay Public Library, Fairplay Post Office, and Town of Fairplay Website on Friday, July 15, 2016*





## MEMORANDUM

**TO:** Mayor and Board of Trustees

**FROM:** Tina Darrah, Town Administrator/Clerk

**RE:** Presentation for RE-2 School District – Foss Smith, School Board  
President

**DATE:** July 15, 2016

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Included in your packet is information from Foss Smith, President of the School Board. He has requested time before you to present the goals for the School District as adopted by the District Board.

**PARK COUNTY RE2 SCHOOL DISTRICT – OVERALL GOALS  
July 2016 Update**

**E – OVERALL GLOBAL ENDS**

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The District will provide a safe, productive learning environment with an effective partnership between the school, home and community. Within the available resources of our District, our students will be prepared (1) academically, (2) technologically, (3) physically and (4) socially to become productive members of the global community.

**SPECIFIC ENDS POLICIES**

**E-1 STUDENT LEARNING/CURRICULUM AND INSTRUCTION**

**E-2 PROFESSIONAL AND RESPECTFUL LEARNING ENVIRONMENT**

**E-3 SAFE AND SECURE ENVIRONMENT**

**E-4 PARENT / COMMUNITY ENGAGEMENT PARTNERSHIPS  
(STAFF, STUDENTS, PARENTS AND COMMUNITY)**

**E-5 FACILITIES, SUPPORT SYSTEMS, AND FOOD SERVICES**

**E-6 FINANCIAL**

**POLICY TITLE: E-1 STUDENT LEARNING/CURRICULUM AND INSTRUCTION**

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**E-1a** Park County Re2 School District will comply with its annual commitment with CDE for instructional time with an emphasis on uninterrupted instructional time.

**E-1b** Each Student will meet or exceed district and state academic standards for post-secondary readiness as developmentally appropriate. These Preschool-12 academic areas include but are not limited to:

Core Curriculum

- English/Language Arts
- Mathematics
- Science
- Social Studies

Additional Curriculum

- Art
- World Language
- Music
- PE/Health
- Personal Finance
- Technology
- Vocational/Life Skills
- Workstudy / internships

Supportive Curriculum

- ELL
- Gifted and Talented
- Guidance/Counseling
- Special Education

**E-1c** A school culture of high academic expectations and hard work will be established in order to foster the confidence and skills students will need to meet or exceed district and state academic standards for post-secondary readiness including a commitment to the Individual Career and Academic Process (ICAP).

**POLICY TITLE: E-2 PROFESSIONAL AND RESPECTFUL LEARNING ENVIRONMENT**

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**E-2a** The District staff will possess and demonstrate the skills and attitudes to lead our students towards healthy, caring and responsible lives.

Staff members will demonstrate appropriate leadership traits, principles, collegiality, collaboration and active learning toward the achievement of district goals.

**E-2b** The District expectations for all stakeholders will be:

- A reasonable balance between participation and winning in extracurricular and co-curricular activities
- Credit for and recognition of achievements
- Collaborative decision making
- Respect for human diversity
- Respect for self and others
- Safe, civil and healthy behavior
- Self-discipline and good choices

**POLICY TITLE: E-3 SAFE AND SECURE ENVIRONMENT**

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**E-3a** The District will proactively implement processes to meet all Safety and Security needs. Inspections completed as required with appropriate required follow-up; ongoing appropriate training in emergency processes including building evacuations and lockdowns.

**E-3b** Safe, civil and healthy behaviors are prerequisites for sound educational practice and productive learning; procedures will encourage students to develop a positive attitude toward self-discipline, honesty and socially acceptable behaviors.

The District shall operate with comprehensive written Positive Behavior Intervention and Support (PBIS) policies.

Behavior support processes shall:

- Be fair, firm and consistent
- Include learning opportunities to promote positive behavior change
- Consider both the needs of the student and the school

**POLICY TITLE: E-4 PARENT / COMMUNITY ENGAGEMENT PARTNERSHIPS  
(STAFF, STUDENTS, PARENTS AND COMMUNITY)**

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Good working relations between staff, students, parents and community will be developed and maintained.

Our parent / community engagement partnerships will promote:

- Open communications
- Information sharing
- Positive and effective public relations
- Increased parent and community participation

**POLICY TITLE: E-5 FACILITIES, SUPPORT SYSTEMS, AND FOOD SERVICES**

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- E-5a** The District will develop facilities operational plans for all campuses (Fairplay, Lake George and Guffey) that will support and enhance the educational programs; these will be updated annually with a summary of issues and prioritized needed improvements. District facilities will be maintained and improved to provide a safe, clean, functional and inviting environment. Maintenance and improvement efforts will be prioritized as follows:
- Items that have the potential to cause health, injury or death.
  - Items in violation of current laws and codes including required periodic inspections
  - Items that can cause unsanitary conditions.
  - Preventive maintenance programs and energy/cost saving measures
  - Technology infrastructure to support the educational programs
  - Items that present a positive and welcoming image of the District's buildings and grounds.
- E-5b** The District will provide a nutritious food service program for all students that promotes health and fosters an atmosphere for productive learning.
- E-5c** When transportation is provided, all District vehicles will meet state requirements; in addition there will be a proactive operator training program to meet state requirements.

**POLICY TITLE: E-6 FINANCIAL**

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The Park County Re-2 School District will develop a sustainable, accountable and transparent financial plan. The plan will include:

- A balanced budget
- A prioritization of District needs and support for innovation within available resources
- Compensation and work environment which will attract and retain quality staff
- Efficient accounting systems and processes





## MEMORANDUM

**TO:** Mayor and Board of Trustees  
**FROM:** Kim Wittbrodt  
**RE:** Expenditures  
**DATE:** July 15, 2016

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Agenda Item: Bills

Attached is the list of invoices paid through July 14, 2016.

Total Expenditures: \$79,983.48

Please contact me with any questions.

Report Criteria:  
 Detail report type printed

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
07/06/2016	11657	Bullock, Scott	artwork for events	1	07/01/2016	350.00	105162
Total 262:						350.00	
07/06/2016	11658	Caselle, Inc	Software Support	1	06/01/2016	404.50	105060
07/06/2016	11658		Software Support	2	06/01/2016	202.25	617360
07/06/2016	11658		Software Support	3	06/01/2016	202.25	507360
Total 334:						809.00	
06/24/2016	11618	Cash	Petty Cash-change for con	1	06/23/2016	400.00	101002
06/28/2016	11648		parade cash	1	06/28/2016	150.00	105171
07/06/2016	11659		Petty Cash	1	07/01/2016	1.36	105035
07/06/2016	11659		Petty Cash	2	07/01/2016	68.75	105070
07/06/2016	11659		Petty Cash	3	07/01/2016	5.00	105140
07/06/2016	11659		Petty Cash	4	07/01/2016	10.98	105420
07/06/2016	11659		Petty Cash	5	07/01/2016	4.23	105445
07/06/2016	11659		Petty Cash	6	07/01/2016	20.00	105450
07/06/2016	11659		Petty Cash	7	07/01/2016	24.01	617310
Total 340:						684.33	
06/24/2016	11619	CIRSA	worker comp audit premiu	1	05/12/2016	507.10	105014
06/24/2016	11619		worker comp audit premiu	2	05/12/2016	69.15	105312
06/24/2016	11619		worker comp audit premiu	3	05/12/2016	645.40	105414
06/24/2016	11619		worker comp audit premiu	4	05/12/2016	322.70	105614
06/24/2016	11619		worker comp audit premiu	5	05/12/2016	368.80	507014
06/24/2016	11619		worker comp audit premiu	6	05/12/2016	391.85	617014
Total 418:						2,305.00	
06/20/2016	11608	Colorado Bureau of Investi	blood test	1	06/13/2016	330.00	105475
Total 472:						330.00	
06/27/2016	11632	Dana Kepner Company, In	hydrant wrench	1	06/23/2016	164.76	507160
Total 662:						164.76	
06/20/2016	11612	Main Street Garage	tire repair	1	06/10/2016	53.00	105420
06/20/2016	11612		tires tahoe	1	06/17/2016	815.27	105420
Total 1336:						868.27	
07/06/2016	11668	Postal Pros, Inc.	water billing	1	06/06/2016	169.93	617310
07/06/2016	11668		water billing	2	06/06/2016	169.93	507310
Total 1699:						339.86	
06/27/2016	11640	Salida Fire Extinguisher, L	fire ext service	1	06/23/2016	81.25	105650
06/27/2016	11640		fire ext service	2	06/23/2016	81.25	105025
06/27/2016	11640		fire ext service	3	06/23/2016	81.25	617155
06/27/2016	11640		fire ext service	4	06/23/2016	81.25	507160
06/27/2016	11640		fire ext service	5	06/23/2016	81.25	507160

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
06/27/2016	11640		fire ext service	6	06/23/2016	81.25	507160
Total 1858:						325.00	
06/27/2016	11641	USABlueBook	water maint equip	1	06/13/2016	98.37	507160
Total 2176:						98.37	
07/06/2016	11675	Verizon Wireless	Police Air Cards	1	07/01/2016	120.03	105455
Total 2212:						120.03	
06/27/2016	11645	Werner, Claudia	cell phone reimb	1	06/27/2016	50.00	105065
Total 2242:						50.00	
07/06/2016	11677	Xcel Energy	945 quarry road	1	06/14/2016	14.88	507185
07/06/2016	11677		901 main street	1	06/20/2016	171.74	105023
07/06/2016	11677		117 silverheels road	1	06/20/2016	12.80	105841
07/06/2016	11677		747 bogue	1	06/20/2016	11.99	105841
07/06/2016	11677		1800 cty road 659	1	06/20/2016	1,153.50	507390
07/06/2016	11677		fairplay sign #1	1	06/20/2016	12.51	105640
07/06/2016	11677		fairplay chlorinator	1	06/20/2016	61.42	507390
07/06/2016	11677		525 hathaway	1	06/20/2016	126.71	105190
07/06/2016	11677		sanitation	1	06/22/2016	3,491.98	617104
07/06/2016	11677		1190 castello	1	06/23/2016	108.24	507390
07/06/2016	11677		1190 castello	2	06/23/2016	108.24	105650
07/06/2016	11677		200 2nd street	3	06/23/2016	69.42	507390
07/06/2016	11677		157 6th street	4	06/23/2016	16.48	105640
07/06/2016	11677		156 6th street	5	06/23/2016	11.99	105640
07/06/2016	11677		589 platte drive	6	06/23/2016	13.32	105841
Total 2296:						5,367.20	
07/06/2016	11667	KONICA MINOLTA BUSIN	C364E Copier	1	06/17/2016	554.02	105032
Total 2448:						554.02	
06/20/2016	11809	Darrah, Tina	CML Conference - per die	1	06/16/2016	236.00	105015
06/27/2016	11633		Cell Phone	1	06/27/2016	50.00	105065
07/06/2016	11662		burro booth refund	1	07/01/2016	75.00	104756
Total 2462:						361.00	
06/20/2016	11614	Salt Licking Goat Clothing	vest embroidery	1	06/15/2016	151.00	105630
Total 2500:						151.00	
06/27/2016	11635	Envision Sign and Graphic	vinyl banners	1	05/30/2016	342.00	105150
06/27/2016	11635		vinyl banners	2	05/30/2016	216.00	105130
Total 2526:						558.00	
07/06/2016	11664	Friends of the Fairplay Co	food purchased for band	1	07/06/2016	64.00	105150
Total 2543:						64.00	

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
07/06/2016	11674	Susan Dunn	Town maps and postcards	1	06/28/2016	3,106.87	105130
Total 2605:						3,106.87	
07/06/2016	11660	CenturyLink	acct 719-836-4609 502B	1	06/19/2016	56.82	507320
07/06/2016	11660		alarm line-525 Hathaway	1	06/19/2016	35.28	105180
07/06/2016	11660		7198362622355B	1	06/19/2016	431.67	105065
07/06/2016	11660		7198362445	1	06/19/2016	26.70	617320
07/06/2016	11660		acct 82239760	1	06/19/2016	29.55	105065
Total 2614:						580.12	
07/06/2016	11663	DeBaun, Russell	burn booth refund	1	07/01/2016	75.00	104756
Total 2628:						75.00	
06/27/2016	11647	Wittbrodt, Kim	cell phone reimb	1	06/27/2016	50.00	105065
Total 2655:						50.00	
06/27/2016	11627	Black Cat Pumping, LLC	pump and clear water valv	1	06/16/2016	100.00	507155
Total 2687:						100.00	
06/27/2016	11644	Vino Salida Wine Cellars	wine for concerts	1	06/21/2016	1,380.00	105150
07/06/2016	11676		wine for events	1	06/30/2016	588.00	105162
Total 2694:						1,968.00	
06/27/2016	11643	Vice, Joel	Cell phone reimburse	1	06/27/2016	50.00	105455
Total 2713:						50.00	
06/27/2016	11637	Mead, Vaughn	cell phone reimb	1	06/27/2016	25.00	105645
06/27/2016	11637		cell phone reimb	2	06/27/2016	12.50	507320
06/27/2016	11637		cell phone reimb	3	06/27/2016	12.50	617320
Total 2739:						50.00	
06/20/2016	11611	Kasper, Gerrits	mileage reimburse flowers	1	06/16/2016	49.14	105134
06/27/2016	11636		cell phone reimb	1	06/27/2016	50.00	105645
Total 2747:						99.14	
07/06/2016	11665	ghVALLEY.NET	internet service	1	07/01/2016	16.76	105065
07/06/2016	11665		internet service	2	07/01/2016	16.74	105645
07/06/2016	11665		internet service	3	07/01/2016	16.74	105455
Total 2753:						50.24	
06/20/2016	11610	Douglas, Ray	per diem - cml	1	06/16/2016	.00	105110
			per diem - cml	2	06/16/2016		105110
06/27/2016	11634		per diem - cml	1	06/16/2016	104.80	105110
Total 2790:						104.80	
07/06/2016	11661	Chaffee County Waste	6 yd weekly	1	07/01/2016	100.00	105650

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
07/06/2016	11661		6 yd weekly	2	07/01/2016	100.00	105023
Total 2801:						200.00	
06/27/2016	11639	Richie Law Enterprises, LL	band for July 4th	1	06/27/2016	1,200.00	105171
Total 2807:						1,200.00	
06/20/2016	11606	Bullock, Julie	cookies for meeting	1	06/20/2016	8.97	105130
06/27/2016	11630		cell phone reimburse	1	06/27/2016	50.00	105065
Total 2812:						58.97	
06/27/2016	11648	Zerby, Colin	cell phone reimburse	1	06/27/2016	50.00	105455
Total 2841:						50.00	
06/20/2016	11607	Colorado Analytical Lab	water testing	1	06/13/2016	23.00	507140
06/27/2016	11631		waste water testing	1	06/16/2016	164.00	617140
Total 2864:						187.00	
07/06/2016	11671	South Park Brewing	beer for events	1	06/28/2016	460.00	105150
Total 2873:						460.00	
06/24/2016	11620	Shirley Septic Pumping, In	Rock & Gem port a pots	1	06/08/2016	640.00	105170
06/24/2016	11620		port a pots-hprs <i>race</i>	1	06/10/2016	270.00	105170
07/06/2016	11670		port a pots	1	06/27/2016	360.00	105150
Total 2893:						1,270.00	
06/27/2016	11629	Bramlett, Rebecca	cell phone reimburse	1	06/27/2016	50.00	105455
Total 2896:						50.00	
07/06/2016	11669	Rise Broadband	internet	1	07/01/2016	86.97	617320
Total 2900:						86.97	
06/20/2016	11613	Michelle Vice	sew patches	1	06/16/2016	20.00	105630
Total 2904:						20.00	
07/06/2016	11666	Jean Krak	website maintenance	1	06/30/2016	87.25	105130
Total 2945:						87.25	
06/27/2016	11646	White, Kathleen	cell phone reimburse	1	06/27/2016	25.00	105645
06/27/2016	11646		cell phone reimburse	2	06/27/2016	12.50	507320
06/27/2016	11646		cell phone reimburse	3	06/27/2016	12.50	617320
Total 3004:						50.00	
06/20/2016	11605	Bramlett, Raymond	mileage reimburse - flower	1	06/16/2016	49.14	105134
06/27/2016	11628		cell phone reimburse	1	06/27/2016	12.50	105645
06/27/2016	11628		cell phone reimburse	2	06/27/2016	12.50	507320

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
06/27/2016	11628		cell phone reimburse	3	06/27/2016	12.50	617320
06/27/2016	11628		cell phone reimburse	4	06/27/2016	12.50	105645
Total 3005:						89.14	
06/20/2016	11604	Stephen Schambach	tail hall window cleaning	1	06/16/2016	250.00	105027
Total 3015:						250.00	
06/20/2016	11615	Slick Underground	street cut deposit <i>refund</i>	1	06/20/2016	7,000.00	102120
Total 3016:						7,000.00	
06/24/2016	11621	Summit Community Care C	donation for clinic	1	06/23/2016	4,000.00	105190
07/06/2016	11673		el pomar donation	1	07/01/2016	5,000.00	105190
Total 3017:						9,000.00	
06/27/2016	11638	Mountain Connection	ad	1	06/17/2016	344.00	105162
Total 3018:						344.00	
06/27/2016	11642	Velocity Plant Services	pump house improvements	1	06/21/2016	11,902.00	507120
06/27/2016	11642		wasting line	2	06/21/2016	24,409.16	617395
Total 3019:						36,311.16	
07/06/2016	11656	Brand Evolutions West	tshirts for race	1	06/29/2016	179.98	105171
Total 3020:						179.98	
07/06/2016	11672	South Park Disc Golf	tournament sponsor	1	07/06/2016	325.00	105170
Total 3021:						325.00	
Grand Totals:						76,963.48	

*-offset by check for El Pomar.*

Report Criteria:  
 Detail report type printed

**MAYOR'S OPENING STATEMENT  
VARIANCE HEARING FOR 412 CASTELLO AVENUE**

MAYOR LANE:

I WILL NOW OPEN THE PUBLIC HEARING ON THE APPLICATION OF ANDREW AND TAMMY PORTER FOR A VARIANCE ON THE PROPERTY LOCATED AT 412 CASTELLO AVENUE.

THE FAIRPLAY BOARD OF TRUSTEES, ACTING AS THE BOARD OF ADJUSTMENT, HAS JURISDICTION TO CONDUCT THIS PUBLIC HEARING UNDER SECTION 31-23-301 OF THE COLORADO REVISED STATUTES AND UDC ARTICLE VI OF THE FAIRPLAY MUNICIPAL CODE. NOTICE OF THIS HEARING HAS BEEN GIVEN BY POSTING, MAILING AND PUBLICATION IN THE MANNER REQUIRED BY SECTION 16-4-10 OF THE FAIRPLAY MUNICIPAL CODE, UDC ARTICLE IV, AND EVIDENCE OF SUCH NOTICE IS HEREBY MADE A PART OF THE RECORD OF THIS PROCEEDING.

THE PURPOSE OF THIS HEARING IS TO CONSIDER THE APPLICATION OF ANDREW AND TAMMY PORTER FOR A VARIANCE ON THE SUBJECT PROPERTY. THE APPLICANT SEEKS APPROVAL OF THE VARIANCE FROM THE REAR AND SIDE YARD SETBACKS ON THE SINGLE FAMILY RESIDENTIAL ZONED PROPERTY.

THE PROCEDURE TO BE FOLLOWED IN THIS CASE WILL BE AS FOLLOWS:

1. STAFF COMMENT WILL BE PRESENTED.
2. THE APPLICANT, OR THE APPLICANT'S LEGAL COUNSEL, MAY GIVE AN OPENING STATEMENT.
3. FOLLOWING THE OPENING STATEMENT, IF ANY, THE APPLICANT AND ANY OTHER PERSONS SUPPORTING THE APPLICATION MAY PRESENT ANY EVIDENCE SUPPORTING THE PROPOSED VARIANCE ON THE SUBJECT PROPERTY.
4. AT THE CONCLUSION OF THE APPLICANT'S CASE, ANY PERSONS OPPOSING THE PROPOSED VARIANCE ON THE SUBJECT PROPERTY MAY PRESENT EVIDENCE.
5. THE APPLICANT MAY THEN PRESENT ANY REBUTTAL EVIDENCE.

THIS HEARING IS BEING RECORDED AND I WILL CAUTION ALL WITNESSES AND ATTENDEES THAT THEY MUST IDENTIFY THEMSELVES BEFORE SPEAKING AND THAT THEY MUST SPEAK CLEARLY SO THE RECORDING DEVICE CAN RECORD THEIR COMMENTS. COMMENTS OR INTERRUPTIONS FROM MEMBERS OF THE AUDIENCE DURING TESTIMONY WILL INTERFERE WITH THE PROCEEDING AND WILL NOT BE ALLOWED.

ARE THERE ANY OBJECTIONS TO THE JURISDICTION OF THE BOARD OF TRUSTEES OR TO THE PROCEDURE WHICH I HAVE JUST DESCRIBED?

HEARING NONE, THE APPLICANT WILL NOW PRESENT ITS CASE.

7/12/16  
U:\DEPUTY CLERK\BOT\2016\JULY 18\OPENING.VARIANCE.DOC

**RESOLUTION NO. 17**  
**(Series of 2016)**

**A RESOLUTION APPROVING THE APPLICATION FOR  
A SIDE AND REAR YARD SETBACK VARIANCE AT  
CERTAIN REAL PROPERTY COMMONLY KNOWN  
AND NUMBERED AS 412 CASTELLO AVENUE,  
FAIRPLAY, COLORADO.**

WHEREAS, the Applicants, Andrew and Tammy Porter have applied for a side and rear yard setback variance to allow for a 0' side yard setback and a 0' rear yard setback in the Single Family Residential Zone District at the property commonly known and numbered as 412 Castello Avenue in Fairplay as is more particularly described in the application which is incorporated into and made a part of this resolution (the "Property"); and

WHEREAS, a public hearing on the application was held before the Board of Trustees of the Town of Fairplay on July 18, 2016, preceded by public notice of such hearing as required by Sec. 16-4-10 of the Fairplay Municipal Code; and

WHEREAS, at the public hearing the Board of Trustees, acting as the Board of Adjustment, heard evidence from interested parties and considered the factors for approval of a variance set forth in Sec. 16-22-70 of the Fairplay Municipal Code;

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY;

1. Approval. The application for a side and rear yard setback variance so as to allow for a 0' side yard and a 0' rear yard setback in the Single Family Residential Zone District at the location depicted and described in the application is granted and approved for the purpose of allowing a temporary storage building to be placed within the setback area. The Board finds that the requirements and conditions of Sec. 16-22-70(2) are met.

2. Condition. The Town of Fairplay and the applicant(s) recognize that the proposed location for the temporary storage building may be on or near a recorded easement and the applicant(s)/ owners of the property agree to move the structure if the easement area needs to be accessed.

2. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this Resolution is promulgated under the general police power of the Town of Fairplay, that it is promulgated for the health, safety, and welfare of the public and that this

7/14/16  
U:\DEPUTY CLERK\BOT\2016JULY 18\PORTER SETBACK RES.DOC



Resolution is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Board of Trustees further determines that the Resolution bears a rational relation to the proper legislative object sought to be attained.

3. Severability. If any clause, sentence, paragraph or part of this Resolution or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

RESOLVED, APPROVED AND ADOPTED by the Board of Trustees of the Town of Fairplay on the 18<sup>th</sup> day of July, 2016 upon the motion of Board Member \_\_\_\_\_, the second of Board Member \_\_\_\_\_, and by a vote of \_\_\_ in favor and \_\_\_ against.

\_\_\_\_\_  
Gabby Lane, Mayor

ATTEST:

\_\_\_\_\_  
Tina Darrah, Town Clerk



# DEVELOPMENT APPLICATION

**TOWN OF FAIRPLAY**  
PO Box 267  
FAIRPLAY, CO 80440  
719-836-2622

### APPLICATION TYPE

- Planned Unit Development
- Major Subdivision
- Minor Subdivision
- Zoning Map Amendment (Rezoning)
- Plat Amendment/Lot Line Adjustment
- Variance

### STATE USE ONLY

- Staff Review Required
- Pre-Application Conference Required
- Planning Commission Action Required
- Board of Trustees Action Required

### APPLICANT INFORMATION

Applicant: Andrew & Tammy Porter Date: 6/28/16  
 Applicant's Address: PO Box 1969, Fairplay, CO 80440  
 Applicant's Phone: (760) 709-1501 Fax: (970) 531-6768  
 Email Address: tammy-porter3@yahoo.com

### OWNER INFORMATION

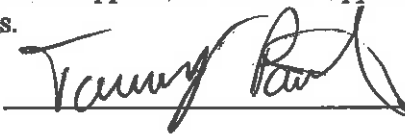
Applicant's Relationship to Owner: Owner  
 Owner: \_\_\_\_\_  
 Owner's Address: \_\_\_\_\_  
 Owner's Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

### PROPERTY INFORMATION

Address: 412 Castello Ave, Fairplay, CO 80440  
 Parcel #: 390  
 Subdivision: Clark & Bogue's  
 Lot: 344 Block 10  
 Existing Zoning: SF Res  
 Number of Acres: 0.17

NOTE: No application will be accepted or processed unless it is complete and all fees are paid. In the event the town must retain outside professional services to process or evaluate an application, the applicant shall bear the costs of same, inclusive of engineering and legal fees, in addition to the base application fee. A deposit to cover the reasonable anticipated costs for outside professional services may be required at the time of application. All applications shall be evaluated under the standards and requirements set forth in Section 15 of the Zoning Code and must be accompanied by seven (7) copies of a proposed site plan/plat prepared by a professional engineer or surveyor.

I hereby certify that I am the applicant named above and that the information contained herein and on any attachments hereto is in all respects true and accurate to the best of my knowledge and belief. I also understand that a building permit may not be issued for the property subject to this application until the application receives final approval by the Board of Trustees.



Applicant

---

FOR TOWN USE ONLY

Application Checklists

- Complete Application.
- Proof of Ownership (deed) for project property
- Written authorization from property owner(s) for agent (if applicable)
- Existing PUD plat/recording information
- Proposed site development plan/plat (7 copies). If there are structures on property, they must be on plat with all dimensions
- List of persons entitled to notice (by name and mailing address) *^ Claudia*
- Mailing envelopes (stamped and addressed) for persons entitled to notice *x Claudia*
- Proposed development improvements agreement (if applicable). (3 copies)
- Fees and/or deposit *\$100 paid ck # 1368 on 6/28/16*
- Other \_\_\_\_\_

Commitment Number: 2645471  
Seller's Loan Number: 860494

After Recording Return To:  
Andrew T. Porter and Tammy L. Porter  
412 Castello Ave., Fairplay, CO 80440.

**PROPERTY APPRAISAL (TAX/APN) PARCEL IDENTIFICATION NUMBER**  
390

**SPECIAL WARRANTY DEED**

Federal Home Loan Mortgage Corporation, whose mailing address is 5000 Plano Parkway, Carrollton, Texas 75010, hereinafter grantor, for \$119,800.00 (One Hundred and Nineteen Thousand Dollars and Eight Hundred Dollars and no Cents) in consideration paid, sells and conveys with covenants and will only warrant the title against all persons claiming under the Grantor(s) to Andrew T. Porter and Tammy L. Porter, hereinafter grantees, whose tax mailing address is 412 Castello Ave., Fairplay, CO 80440, the following real property:

All that certain parcel of land situate in Fairplay, County of Park, State of Colorado, more particularly described as follows: LOTS 3 AND 4, BLOCK 10, CLARK & BOGUE'S ADDITION, FAIRPLAY, COUNTY OF PARK, STATE OF COLORADO.  
Property Address is: 412 Castello Ave., Fairplay, CO 80440.

Seller makes no representations or warranties, of any kind or nature whatsoever, whether expressed, implied, implied by law, or otherwise, concerning the condition of the title of the property prior to the date Seller took title to said Property.

The real property described above is conveyed subject to the following: All easements, covenants, conditions and restrictions of record; All legal highways; Zoning, building and other laws, ordinances and regulations; Real estate taxes and assessments not yet due and payable; Rights of tenants in possession.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereto belonging or in anywise appertaining, and all the estate, right, title interest, lien equity and claim whatsoever of the said grantor, either in law or equity, to the only proper use, benefit and behalf of the grantees forever.

Prior instrument reference: 678698  
Power of Attorney: 03/22/2011 Reception#: 669702

The actual consideration for this conveyance is \$119,800.00.

P0131969

Executed by the undersigned on 10/31, 2011:

**Federal Home Loan Mortgage Corporation**

By: Chicago Title Insurance Company, its Attorney in Fact

By: Melissa Harvey

Name: Melissa Harvey

Title: AUP

STATE OF PA  
COUNTY OF BRADY

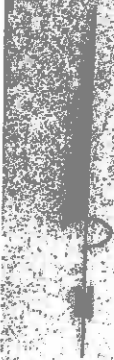
ACKNOWLEDGED AND EXECUTED BEFORE ME, on this 31 day of Oct, 2011, by Melissa Harvey of Chicago Title Insurance Company as the Attorney in Fact for Federal Home Loan Mortgage Corporation, and is appearing on behalf of said corporation, with full authority to act for said corporation in this transaction, who is known to me or has shown \_\_\_\_\_ as identification, who after being by me first duly sworn, deposes and says that he/she has the full binding legal authority to sign this deed on behalf of the aforementioned corporation and acknowledge said authority is contained in an instrument duly executed, acknowledged; and recorded as set forth above, and that this instrument was voluntarily executed under and by virtue of the authority given by said instrument granting him/her power of attorney.

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Ovetha Michelle McCortney, Notary Public  
Hopewell Twp., Butler County  
My Commission Expires April 7, 2015  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Christina Michelle McCortney  
NOTARY PUBLIC  
My Commission Expires  
4/7/2015

This instrument prepared by:  
Jay A. Rosenberg, Esq., Rosenberg LPA, Attorneys At Law, 7367A E. Kemper Road, Cincinnati,  
Ohio 45249 (513) 247-9605 Fax: (866) 611-0170

# COLORADO NE LOT



1" = 10'

LOT 2

LOT 3

LOT 4

LOT 5

EXISTING  
WELL

CASTELLO AVE (100)

ANDREW TRAVERSE PORTER  
TAMMY LYNN PORTER  
PH. 780 709-1501  
PO BOX 1939  
FAIRPLAY, CO 80440

1368  
#2-157/1021

6/28/16

Town of Fairplay  
one hundred <sup>00</sup>/<sub>100</sub>

\$ 100<sup>00</sup>

Dollars



FAIRPLAY HEALTH  
TRUST

variance app. fee

Tammy Lynn Porter

⑆102101577⑆167867350⑆1368

**NOTICE OF PUBLIC HEARING  
BEFORE THE FAIRPLAY BOARD OF TRUSTEES  
CONCERNING A VARIANCE REQUEST**

A public hearing will be held before the Fairplay Board of Trustees in the Council Chambers of Town Hall, 901 Main Street, Fairplay, Colorado, on Monday, July 18, 2016 at 7:00 p.m. concerning a Request for Variance for 412 Castello Avenue, Fairplay, CO. Specifically, the applicant is asking for a variance from the minimum side and rear yard setback requirements in the Single Family Residential Zone District of 10' rear yard and 5' side yard as defined in the Fairplay Municipal Code to a 0' side yard setback and a 0' rear yard setback. The applicants for the variance are Andrew and Tammy Porter. For further information, please contact the Fairplay Town Hall at (719)836-2622.

Published ONE TIME in the FAIRPLAY FLUME on July 8, 2016.



**AFFIDAVIT**

Regarding the Required Posting of Property:  
412 Castello Avenue  
Fairplay, CO 80440

I, Vaughn Mead, hereby certify that I have posted the property located at 412 Castello Avenue, with the proper notice for:

**Public Hearing before the Board of Trustees on a Variance Request.**

Date of Posting: Thursday, July 7, 2016

Date of Affidavit: Thursday, July 7, 2016

  
\_\_\_\_\_  
Town of Fairplay Staff



**Town of Fairplay**  
901 Main Street • P.O. Box 267  
Fairplay, Colorado 80440  
(719) 836-2622 phone  
(719) 836-3279 fax  
[www.fairplayco.us](http://www.fairplayco.us)

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July 7, 2016

**Notice of Public Hearing**  
**Regarding the land use application for a Variance for the property located at 412**  
**Castello Avenue, in the Town of Fairplay:**

This is to advise you that on Monday, July 18, 2016 at 7:00 p.m. the Board of Trustees for the Town of Fairplay will conduct a public hearing at the Fairplay Town Hall, 901 Main Street, Fairplay, Colorado, concerning:

a request for Variance for 412 Castello Avenue, Fairplay, CO. Specifically, the applicant is asking for a variance from the minimum side and rear yard setback requirements in the Single Family Residential Zone District of 10' rear yard and 5' side yard as defined in the Fairplay Municipal Code to a 0' side yard setback and a 0' rear yard setback.

The applicants are Andrew and Tammy Porter.

As an adjoining property owner, you may approve or object to the requested land use application. You may appear at the Fairplay Board of Trustees meeting as noted above, or you may address your concerns to the Town of Fairplay, PO Box 267, Fairplay, CO 80440. Please call (719) 836-2622 with any questions.

Certificate of Mailing Attached.

## CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Notice of Public Hearing Regarding the land use application for a Variance, located at 412 Castello Avenue in the Town of Fairplay was placed in the United States mail, postage prepaid, first class, this 7th day of July, 2016, addressed to:

Sch#390  
Andrew and Tammy Porter  
P O Box 1969  
Fairplay, CO 80440

Sch#392  
Donald Archer  
P O Box 14  
Fairplay, CO 80440

Sch 405  
Fairplay Residential Investors Inc  
P O Box 1133  
Fairplay, CO 80440

Sch#44566  
Tuggle Family Trust  
797 Brookhurst Ave, #B  
Highlands Ranch, CO 80129

Sch#440  
Paul Martinez  
2334 S Clayton St  
Denver, CO 80210

Sch#536  
Matt and Caralee Niemiec  
23591 N Overhill Dr  
Lake Zurich, IL 60047

Sch#543  
Jacklyn Beckham  
P O Box 784  
Fairplay, CO 80440

  
\_\_\_\_\_  
Claudia Werner – Deputy Town Clerk

## **Claudia Werner**

---

**From:** Vickie HALITSKY [vichali@msn.com]  
**Sent:** Wednesday, July 13, 2016 2:38 PM  
**To:** cwerner@fairplayco.us  
**Subject:** 412 & 450 Castello Ave

Claudia,

Thank you for taking the time to talk to me yesterday. Like I said on the phone my Grandparents do not have a problem with Andy & Tammy putting a shed on their property. They would however like to make sure that:

1. Their fence is not taken down
2. That there isn't any equipment being driven on their property

We appreciate your consideration of our requests.

Sincerely,

Paul & Irene Martinez  
Anthony Halitsky Jr  
Lorri K Williamson



## MEMORANDUM

**TO:** Mayor and Board of Trustees  
**FROM:** Kim Wittbrodt  
**RE:** 2015 Audits  
**DATE:** July 15, 2016

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**Agenda Item: Presentation of 2015 Audit**

Tim Mayberry will be presenting the Town of Fairplay and the Fairplay Sanitation District 2015 audits. The audits are due to the State Auditor by July 31<sup>st</sup>. If you are not comfortable approving the audits at the July 18<sup>th</sup> meeting we will have to hold a special meeting to approve them prior to the due date to the state.

Please note the Budget Violation on page 33. All the employment costs needed to be transferred via journal entry from the Sanitation District to the water fund. I did not amend the 2015 to reflect these additional expenditure line items. The bottom line of the water fund was not affected due to the fact that there was an offsetting revenue entry.

Please contact me with any questions.

**Recommended Action:** Motion to accept the 2015 Town and Sanitation District Audits. This will require a second and a voice vote.





## MEMORANDUM

**TO:** Mayor and Board of Trustees  
**FROM:** Kim Wittbrodt, Town Treasurer  
**RE:** Schlatter Land Funding – Resolution No. 18  
**DATE:** July 15, 2016

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This item is on the agenda to finally approve the purchase of the Schlatter Parcel. The resolution approves the Equipment/Lease Purchase Agreement. Per our previous discussions with you, the lender is NBH Bank, who specializes in government and non-profit financing. This lease purchase uses the Town's equipment (vehicles) as collateral instead of the land. We are basically taking a lease purchase out on our already owned equipment, bypassing the need for bond council, appraisals, etc. NBH Bank has offered an interest rate of 2.84% for 10 years. The details of the lease are found in the attached exhibits.

If you have questions prior to the meeting, please give me a call. Lee will also be present to answer any legal questions.

**Recommended Motion:**

Motion to approve Resolution No. 18, series of 2016. This will require a second and a roll call vote.





**RESOLUTION NO. 18-SERIES 2016**

**A RESOLUTION AUTHORIZING THE NEGOTIATION, EXECUTION, AND DELIVERY OF EQUIPMENT LEASE/PURCHASE AGREEMENT IN THE PRINCIPAL AMOUNT OF \$225,000 BETWEEN TOWN OF FAIRPLAY AND NBH BANK, PROVIDING LEASE PAYMENTS FROM LEGALLY AVAILABLE FUNDS; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.**

**WHEREAS**, Town of Fairplay (the "Lessee") is a town duly organized and existing pursuant to the Constitution and laws of the State of Colorado; and

**WHEREAS**, the Lessee is a duly and regularly created, organized and existing political subdivision of the State of Colorado (the "State") and body corporate, existing as such under and by virtue of the Constitution, statues and laws of the State; and

**WHEREAS**, the Town Board of Trustees of the Lessee is acting hereunder as the governing body of the Lessee (the "Governing Body"), and

**WHEREAS**, the Governing Body hereby finds and determines that the execution of an Equipment Lease/Purchase Agreement (the "Lease"), for the purpose of leasing with the option to purchase the equipment described in the Lease, is necessary and essential to the functions and operations of the Lessee; and

**WHEREAS**, NBH Bank, a Colorado state bank ("Lessor"), a duly organized and existing national bank, shall act as Lessor under said Lease; and

**WHEREAS**, the Lease shall not constitute a general obligation indebtedness of the Lessee within the meaning of the Constitution and laws of the State; and does not create a multiple year obligation, and is expressly subject to non-appropriation or annual renewal, and

**WHEREAS**, the Lease does not create a multiple fiscal year Direct or Indirect debt or other financial obligation and does not require voter approval in advance under Section 4 (b) of Article X, Section 20 of the Colorado Constitution; and

**WHEREAS**, the Lease will not cause the Lessee to exceed its spending limits; and

**WHEREAS**, federal income tax law requires that issuers of tax-exempt obligations comply with certain post-issuance requirements set forth in the Internal Revenue Code; and

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF LESSEE:**

**Section 1.** The Mayor and Secretary/Treasurer (the "Authorized Officers"), acting on behalf of the Lessee, each are hereby authorized to negotiate, enter into, execute, and deliver the Lease in substantially the form set forth in the document presently before the Governing Body, which document is available for public inspection at the office of the Lessee. The Authorized Officers, acting on behalf of the Lessee, are each hereby authorized to negotiate, enter into,

execute, and deliver such other documents relating to the Lease as Authorized Officers, upon advice of counsel, deem necessary or appropriate.

**Section 2.** The Lease shall be in the principal amount of \$225,000 with terms as set forth in the Lease; said Lease to contain an option to purchase by the Lessee as therein set forth.

**Section 3.** The Lessee's obligation under the Lease shall be annually renewable by the Lessee and expressly subject to annual appropriation by the Governing Body; and such obligation under the Lease shall not constitute a general obligation of the Lessee or indebtedness within the meaning of the Constitution and laws of the State of Colorado.

**Section 4.** The Lease does not create a multiple fiscal year direct or indirect Lessee debt or other financial obligation and does not require voter approval in advance under Section 4 (b) of Article X, Section 20 of the Colorado Constitution.

**Section 5.** The Lease will not cause the Lessee to exceed its spending limits under Section 7, Article X, Section 20 of the Colorado Constitution.

**Section 6.** All other related contracts and agreements necessary and incidental to the Lease are hereby authorized.

**Section 7.** The Lessee reasonably anticipates issuance of not more than \$10,000,000.00 of tax-exempt obligations during the period from January 1, 2015 to December 31, 2016 and hereby designates the Lease as a bank qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

**Section 8.** This resolution shall take effect immediately upon its adoption and approval.

**ADOPTED AND APPROVED** this 18<sup>th</sup> day of July, 2016.

**(SEAL)**

**TOWN OF FAIRPLAY**

\_\_\_\_\_  
Gabby Lane, Mayor

**Attest**

\_\_\_\_\_  
Tina Darrah, Town Administrator

The motion to adopt the foregoing resolution was presented to the Governing Body by:

\_\_\_\_\_  
The motion to adopt the foregoing resolution was duly seconded by:

\_\_\_\_\_  
Those voting AYE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Those voting NAY:

\_\_\_\_\_

Those Abstaining or Absent:

\_\_\_\_\_

Thereupon the President, as Chair of the meeting, declared the resolution duly adopted and the Secretary/Treasurer was directed to enter the foregoing proceedings and resolution upon the minutes of the Governing Body.

\_\_\_\_\_  
Gabby Lane, Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Tina Darrah, Town Administrator

**STATE OF COLORADO**

)SS

**COUNTY OF PARK**

I, Tina Darrah, Town Administrator, of Town of Fairplay (the "Lessee"), do hereby certify that the foregoing pages contain a true and correct copy of the proceedings taken by the Board of Trustees of the Lessee at a regular session held on July 18, 2016 so far as said proceedings relate to a resolution authorizing the Equipment Lease/Purchase Agreement, between the Lessee and NBH Bank, a Colorado state bank, a true and correct copy of which is set forth in full in the proceedings of the Governing Body; that said resolution has been duly authenticated by the signatures of the Mayor and myself, as Town Administrator, and duly sealed with the corporate seal of the Lessee and recorded in the official records of the Lessee.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the Lessee, the Town of Fairplay

(SEAL)

\_\_\_\_\_  
Tina Darrah, Town Administrator

## EQUIPMENT LEASE/PURCHASE AGREEMENT

This Equipment Lease/Purchase Agreement dated as of July 22, 2016 (the "Lease"), and entered into between NBH Bank, a Colorado state bank ("Lessor"), and the Lessee described on Exhibit A attached hereto (the "Lessee").

### WITNESSETH:

**WHEREAS**, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee and Lessee desires to lease the Equipment from Lessor subject to the terms and conditions of and for the purpose set forth in this Lease; and

**WHEREAS**, Lessee is authorized under the Constitution and laws, rules and regulations of the State of Colorado (collectively, the "Applicable Laws") to enter into this Equipment Lease/Purchase Agreement for the purposes set forth herein.

**NOW, THEREFORE**, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

**"Commencement Date"** is the date when the term of this Lease begins and Lessee's obligation to pay rent accrues, which date shall be the date of this Lease.

**"Equipment"** means the equipment described in Exhibit B hereto and all substitutions, modifications, additions and improvements thereto, which is the subject of this Lease.

**"Fiscal Year"** means the Lessee's Fiscal Year as described on Exhibit A which is also the Lessee's Budget Year.

**"Lease"** means this Equipment Lease/Purchase Agreement, including the exhibits attached hereto.

**"Lease Term"** means the Original Term and any Renewal Term thereof.

**"Lessee"** means the entity which is described on Exhibit A attached hereto and which is leasing the Equipment from Lessor under the provisions of this Lease.

**"Lessor"** means NBH Bank, a Colorado state bank, acting as Lessor hereunder, and any surviving, resulting, or transferee corporation or any assignee of Lessor.

**"Option Purchase Price"** means the amount which Lessee may, in its discretion, pay Lessor in order to purchase the Equipment, as set forth in Exhibit A hereto.

**“Original Term”** means the period from the Commencement Date until the end of the Fiscal Year of Lessee in effect at the Commencement Date.

**“Renewal Terms”** means the optional renewal terms of this Lease, each having a duration of one year and a term coextensive with Lessee’s Fiscal Year, as provided for in Article IV of this Lease.

**“Rental Payments”** means the basic rental payments payable by Lessee pursuant to the provisions of this Lease during the Lease Term payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assigns in the amounts and at the times during the Lease Term set forth in Exhibit A of this Lease.

**“Vendor”** means the dealer(s) of the manufacturer from whom Lessee requires that the Equipment be purchased.

## ARTICLE II

### COVENANTS OF LESSEE

Lessee represents, covenants and warrants for the benefit of Lessor as follows:

- (a) Lessee is a public body corporate and politic duly organized under the Applicable Laws.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.
- (c) Lessee represents it has full power and authority to enter into this Lease which has been duly authorized, executed and delivered by Lessee and is a valid and binding obligation of Lessee enforceable in accordance with its terms, and all requirements for execution, delivery, and performance of this Lease have been, or will be, complied with in a timely manner.
- (d) The Lease does not require advance voter approval under Article X Section 20 of the Colorado Constitution.
- (e) Lessee has been duly authorized to execute and deliver this Lease under the terms and provisions of the formal proceedings taken by its governing body pursuant to a resolution or ordinance adopted by the Lessee, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of this Lease. Lessee shall cause to be executed an opinion of its counsel on counsel’s letterhead in a form acceptable to Lessor.
- (f) Rental Payments will not cause the Lessee to exceed its applicable spending limits for the Fiscal Year under Article X, Section 20 of the Colorado Constitution.

(g) During the Lease Term, the Equipment will be used by Lessee for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

(h) There are no pending or threatened lawsuits or administrative or other proceedings contesting the authority for, authorization or performance of, or expenditure of funds pursuant to, this Lease.

(i) Information supplied and statements made by Lessee in any financial statement or current budget prior to or contemporaneously with this Lease are true and correct.

(j) During the period this Lease is in force, Lessee will comply with the covenants as defined and set forth in Exhibit A attached hereto.

### ARTICLE III

#### LEASE OF EQUIPMENT

Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment in accordance with the provisions of this Lease, to have and to hold for the Lease Term. In conjunction therewith, Lessee agrees to provide the following additional documents, the terms of which are incorporated herein by references, each of which shall be in a form and substance acceptable to Lessor, in its sole discretion (together with this Lease, the "Lease Documents"):

- (a) Resolution No. 18-Series 2016, of the governing body of Lessee authorizing the negotiation, execution and delivery of the Lease Documents.
- (b) Certificate of Lessee regarding Obligations of Lease.
- (c) Insurance Certificate.
- (d) Acceptance Certificate of Lessee.
- (e) IRS Form 8038-G Information Return.

### ARTICLE IV

#### LEASE TERM

**Section 4.01. Commencement of Lease Term.** The Original Term of this Lease shall commence on the Commencement Date as indicated in Exhibit A hereto and shall terminate at 12:00 midnight of the last day of Lessee's current Fiscal Year. The Lease Term may be continued solely at the option of Lessee for such additional Renewal Terms, each of one (1) year duration, as would be required to make all Rental Payments set forth in Exhibit A hereto. Lessee shall advise Lessor by written notice, sent Certified Mail postage prepaid, not less than thirty (30) days prior to the end of the Renewal Term then in effect, if funds are not appropriated for

the next succeeding Fiscal Year. The Lease shall continue in the event no such notice is given and the Lessee has included the obligation to make the payment set forth in Exhibit A hereto in its budget for the applicable Fiscal Year. The option to continue this Lease shall not be construed to create a multiple Fiscal Year direct or indirect debt. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in Exhibit A of this Lease.

**Section 4.02. Termination of Lease Term.** The Lease Term will terminate upon the earliest of any of the following events:

- (a) Lessee and Lessor elect to terminate the Lease as a result of litigation;
- (b) the expiration of the Original Term or any Renewal Term of this Lease and the non-renewal of this Lease in the event of non-appropriation of funds pursuant to Section 6.05;
- (c) the exercise by Lessee of the option to purchase the Equipment granted under the provisions of Article XI of this Lease.
- (d) the termination of this Lease by reason of damage to or the destruction or condemnation of the Equipment as provided in Section 9.02 hereof;
- (e) determination that the Lease requires voter approval in advance;
- (f) a Default by Lessee and Lessor's election to terminate this Lease under Article XIII; or
- (g) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder.

## ARTICLE V

### ENJOYMENT OF EQUIPMENT

Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment, and Lessee shall during the Lease Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease.

Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

## ARTICLE VI

### RENTAL PAYMENTS

**Section 6.01. Rental Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder



shall constitute a current expense of Lessee payable in the Lessee's current Fiscal Year and not in any other Fiscal Year so as to be construed as multiple Fiscal Year direct or indirect debt or other financial obligation and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

**Section 6.02. Payment of Rental Payments.** Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to the Lessor during the Original Term and any Renewal Terms as hereinafter provided. The Rental Payments during the Original Terms and any additional Renewal Terms shall be the amounts in the "Rental Payment" column as set forth in Exhibit A attached hereto and made a part hereof.

**Section 6.03. Yield.** A portion of each Rental Payment is paid as, and represents the yield on the lease as described on Exhibit A which shall accrue during the Original Term and Renewal Terms.

**Section 6.04. Rental Payments to be Unconditional.** The obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor, any Vendor, or any other person, Lessee shall make all payments of Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Lease. Lessee's obligation to make Rental Payments during the Original Term and the then current Renewal Terms shall not be abated through accident or unforeseen circumstances.

**Section 6.05. Non-appropriation.** Lessee shall not be obligated to make payment of the Rental Payments provided for in this Lease beyond the then current Original or Renewal Term. In the event sufficient funds shall not be specifically budgeted and for any other reason appropriated for the payment of the Rental Payments required to be paid in the next occurring Renewal Term under Exhibit A hereto to continue the leasing of the Equipment for any reason, Lessee agrees at Lessee's cost and expense peaceably to deliver the Equipment to Lessor at such location in the State of Colorado Denver Metropolitan area as specified by Lessor in good working order and condition.

**Section 6.06. No Lessor Liability.** This is a financing arrangement only, and to the extent lawful, Lessee therefore waives any and all claims against Lessor for any and all liability, obligations, losses, claims and damages whatsoever regardless of the cause thereof, any expenses in connection therewith, including, without limiting, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Lease, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase delivery, rejection, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person. This waiver shall continue in full force and effect notwithstanding full payment of all obligations under this Lease and the termination of the Lease

Term. Lessee agrees not to withhold or abate any portion of payment required by reason of any defects, malfunctions, breakdowns or infirmities of the Equipment.

**Section 6.07. Transportation Costs and Change of Condition.** All transportation charges shall be borne by Lessee. Lessee will immediately notify Lessor of any changes occurring in or to the Equipment, of a change in Lessee's address or in any fact or circumstance warranted or represented by Lessee to Lessor, or if any Event of Default occurs.

**Section 6.08. Location of Equipment.** Lessee shall, whenever requested, advise Lessor of the exact location and condition of the Equipment and shall give Lessor immediate notice of any attachment or other judicial process affecting the Equipment. Lessor may, for the purpose of inspection, at all reasonable times enter upon any job, building or place where the Equipment and the books and records of Lessee with respect thereto are located.

**Section 6.09. Return of Equipment.** In the event of the return of any of the Equipment in addition to preparing the Equipment for shipping and paying the delivery cost, Lessee will also return to Lessor the maintenance records and other documents covering or information relating to such Equipment as may be requested by Lessor.

## ARTICLE VII

### TITLE TO EQUIPMENT; PERSONAL PROPERTY; SECURITY INTEREST

**Section 7.01. Title to the Equipment.** During the term of this Lease, title to the Equipment and any and all substitutions, repairs, replacements or modifications will be in Lessor.

**Section 7.02. Personal Property.** The Equipment is, and shall at all times be and remain, personal property notwithstanding that the Equipment or any part thereof may be, or may hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon, real property or any buildings thereon or any fixture, or attached in any manner to what is permanent as by means of cement, plaster, nails, bolts, screws or otherwise.

**Section 7.03. Security Interest.** To evidence the existence of this Lease and secure the payment of all Lessee's obligations under this Lease, Lessee grants to Lessor a security interest based upon the terms and conditions set forth in this Lease, constituting a first lien on all modifications, attachments, accessions and substitutions to or for the Equipment and any proceeds of the Equipment. Lessee agrees to execute such additional documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest and, upon assignment, the security interest of the Assigns of Lessor in the Equipment. The security interest shall be released upon payment in full of all the Rental Payments and upon Lessee's exercise of its Option to Purchase.

Notwithstanding the above, both parties hereto acknowledge and agree that this document represents a lease and not a conditional sale or financing of the Equipment. Notwithstanding anything contained herein to the contrary, Lessee acknowledges Lessor's right to file a financing

statement to evidence Lessor's purchase money security interest in the Equipment in the event a court of competent jurisdiction determines that this document creates a conditional sale or financing of the Equipment and further agrees, in such event, that this document represents a grant of a security interest to the Lessor in the Equipment.

## ARTICLE VIII

### MAINTENANCE; MODIFICATION; TAXES; INSURANCE; AND OTHER CHARGES

**Section 8.01. Maintenance of Equipment by Lessee.** Lessee agrees that at all times during the Lease Term, Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment or cause the Equipment to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair, working order and condition and that Lessee will from time to time make or cause to be made all necessary and proper scheduled maintenance, repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters or for the making of improvements or additions to the Equipment.

**Section 8.02. Modification or Alteration of Equipment.** Subject to the following, Lessee shall have the privilege at its own cost and expense of making substitutions, replacements, modifications and improvements to the Equipment, and the same shall be, consistent with Section 7.01, included under the terms of this Lease a part of the Equipment or be considered proceeds thereof. Specifically, Lessee covenants and agrees that:

(a) Any substitutions, modifications or improvements of or to the Equipment shall not in any way damage the Equipment nor cause it to be used for purposes other than those authorized under the Applicable Laws.

(b) The Equipment, as improved or modified in accordance with this Article VIII shall be of a value not less than the value of the Equipment immediately prior to the improvement or modification.

(c) Any property for which a substitution or replacement is made pursuant to this Section 8.02 may be disposed of by Lessee in any manner and in the sole discretion of Lessee, subject to any requirements of the Vendor so long as the substitution or replacement for such property is of equal or greater value. Lessee shall notify Lessor, in writing, at least ten (10) days prior to any such substitution or replacement so that Lessor shall have the right to amend the Equipment list attached hereto as **Exhibit B** and file an amendment to any financing statements Lessor deems necessary.

(d) Other than Lessor's lien as described herein, Lessee will not permit any lien to be established or remain against the Equipment, including but not limited to a mechanic's or other lien for labor or materials furnished in connection with any remodeling, substitutions, additions, modifications, improvements, repairs, renewals or replacement so made by Lessee.

**Section 8.03. Taxes, Other Governmental Charges and Utility Charges.** The parties to this Lease contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes presently

assessed and levied with respect to personal property. In the event the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Lessee will pay during the Lease Term, as the same respectively becomes due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Lease Term. In the event of the assessment of any taxes on the Equipment, Lessee shall promptly notify Lessor of such assessment and provide proof of payment or a sustained protest.

**Section 8.04. Provisions Regarding Insurance.** At its own expense Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided, with respect to the Equipment, sufficient to protect the Full Insurable Value, as that term is hereinafter defined, of the Equipment and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Lease. At closing, Lessee shall furnish to Lessor certificates evidencing such coverage through the Original Term, and certificates evidencing such coverage through each Renewal Term, when effective. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other properties. If Lessee shall insure similar properties by self-insurance, Lessee will insure the Equipment by means of an adequate insurance fund set aside and maintained out of its revenues.

Lessee shall carry Worker's Compensation insurance covering all employees working on, in, near or about the Equipment, or demonstrate to the satisfaction of Lessor that adequate self-insurance is provided, and shall require any other person or entity working on, in, near or about the Equipment to carry such coverage, and will furnish to Lessor certificates evidencing such coverage throughout the Lease Term.

The term "Full Insurable Value" as used herein shall mean the Option to Purchase Value payable as of the beginning of the payment period then in effect as may be applicable during the Original or any Renewal Term.

Any insurance policy issued pursuant to this Section 8.04 shall be so written or endorsed as to make losses, if any, payable to Lessor and the assigns of Lessor, as their respective interests may appear. The Net Proceeds of the insurance required in this Section 8.04 shall be applied as provided in Section 9.02 hereof. Lessee shall not cancel or materially modify an insurance policy issued pursuant to this Section 8.04 without first giving written notice thereof to Lessor at least ten (10) days in advance of such cancellation.

**Section 8.05. Advances.** In the event Lessee shall fail to maintain the full insurance coverage required by this Lease, fail to keep the Equipment in good repair and operating condition, or fail to perform any other covenant or obligation of this Lease, Lessor may (but shall

be under no obligation to) purchase the required policies of insurance and pay the premiums on the same, make any such repairs or replacements as are necessary and provide for payment thereof or perform any other covenant or obligation of Lessee hereunder; and all amounts so advanced therefore by Lessor shall be paid by Lessee to Lessor, upon demand. Amounts unpaid when due shall accrue interest at the Default Rate as set forth on Exhibit A attached hereto.

**Section 8.06. Indemnification.** Lessee, to the extent permitted by law and subject to the immunity and maximum liability provisions of the Applicable Laws, shall indemnify and save harmless, Lessor and its agents, employees, officers, and directors from and, at Lessee's expense, defend Lessor and its agents, employees, officers, and directors against all liability, obligations, losses, damages, penalties, claims, actions, costs, and expenses (including but not limited to reasonable attorneys' fees) of whatsoever kind or nature which in any way relate to or arise out of this Lease or the ownership, rental, possession, operation, condition, sale, or return of the Equipment. All amounts which become due from Lessee under this Section 8.06 shall be credited with any amounts received by Lessor from insurance provided by Lessee (which is not applied to others sums due from Lessee) and shall be payable by Lessee upon demand therefor by Lessor and shall survive the termination or expiration of this Lease. Notwithstanding anything in this Lease to the contrary, Lessee retains all of its rights and immunities under the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

**Section 9.01. Damage, Destruction and Condemnation.** Unless Lessee shall have exercised its option to purchase the Equipment by making payment of the Option Purchase Price as provided herein, and if prior to the termination of the Lease Term (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof or the estate of Lessee, Lessor or its assigns in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For the purposes of Section 8.04 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

**Section 9.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of the Net Proceeds and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any payments pursuant to the provisions of this Section 9.02, Lessee shall not

be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof, or (b) Lessee shall pay to Lessor the amount of the then applicable Option Purchase Price, and, upon such payment, the Lease Term shall terminate and title to the Equipment, if not previously conveyed to Lessee, shall then be conveyed by Lessor to Lessee as provided in Article XI of this Lease. The amount of the Net Proceeds in excess of the then applicable Option Purchase Price, if any, may be retained by Lessee.

**ARTICLE X  
DISCLAIMER OF WARRANTIES;  
VENDOR'S WARRANTIES; USE OF THE EQUIPMENT**

**Section 10.01. Disclaimer of Warranties.** LESSOR HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND ASSUMES NO OBLIGATION WITH RESPECT TO THE TITLE OR THE CONFORMITY OF THE EQUIPMENT TO SPECIFICATION OR PURCHASE ORDER, ITS DESIGN, DELIVERY, INSTALLATION OR OPERATION. LESSEE LEASES THE EQUIPMENT AS IS. ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES OR USES OF LESSEE, ARE HEREBY WAIVED AND DISCLAIMED. All such risks shall be borne by Lessee without in any way excusing Lessee from its obligations under this Lease, and Lessor shall not be liable to Lessee for any damages on account of such risks. In no event shall Lessor be liable for an incidental, indirect, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or Lessee's use of any item or products or services provided for in this Lease.

**Section 10.02. Vendor's Warranties.** Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in Default hereunder, to assert from time to time whatever claims and rights including warranties of the Equipment which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessee or Lessor with respect to this Lease. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of any such warranties of the Vendor of the Equipment. Lessor may, but shall have no obligation whatsoever to, participate in such claim or action on such warranty, at Lessor's expense. Any recovery under such a warranty shall be made payable jointly to Lessee and Lessor.

**Section 10.03. Use of the Equipment.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of the Equipment may extend and any legislative, executive, administrative

or judicial body exercising any power or jurisdiction over the items of the Equipment, including but not limited to the Applicable Laws.

## ARTICLE XI

### OPTION TO PURCHASE

**Section 11.01. Option to Purchase.** Provided Lessee has complied with the terms and conditions of this Lease, Lessee shall have the option, upon any Payment Date as set forth on Exhibit A to purchase not less than all of the Equipment which is then subject to this Lease, "AS IS" and "WHERE IS". Lessee may exercise such option to purchase by giving written notice to Lessor, not less than sixty (60) days prior to the applicable Payment Date (the "Exercise Date"), provided that upon Lessee's timely payment of all Rental Payments specified in Exhibit A, Lessee shall be deemed to have properly exercised its option to purchase the Equipment.

**Section 11.02. Option Purchase Price.** On or prior to the Exercise Date, Lessee shall pay to Lessor the Option Purchase Price.

**Section 11.03. Effect of Exercise.** Upon exercise of the option to purchase and payment of the applicable Option Purchase Price, Lessee shall be deemed to have acquired all of Lessor's right, title, and interest in and to the Equipment, free of any lien, encumbrance, or security interest except such liens, encumbrances, or security interest as may be created, or permitted and not discharged, by Lessee but without other warranties. Upon payment of the applicable Option Purchase Price, Lessor shall deliver to Lessee a quitclaim bill of sale transferring Lessor's interest in the Equipment to Lessee, without representations or warranties of any kind. Upon Lessee's payment of the Option Purchase Price and Lessor's delivery of a quitclaim bill of sale covering the Equipment, this Lease shall terminate except as to obligations or liabilities accruing hereunder prior to such termination and obligations and liabilities hereunder that expressly survive the termination of this Lease.

## ARTICLE XII

### ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

**Section 12.01. Assignment by Lessor.** Lessor's right, title and interest in this Lease and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees. No subsequent assignment or reassignment of any of Lessor's right, title, or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a duplicate original counterpart of the document by which such assignment or reassignment is made, disclosing the name and address of each such assignee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Internal Revenue Code, Section 149 (a) (3), and the regulations, proposed or existing, from time to time promulgated thereunder.

**Section 12.02. Assignment and Subleasing by Lessee.** This Lease and the interest of Lessee in the Equipment may not be assigned or sublet by Lessee for any reason without the

express written consent of Lessor; provided, however, that no such consent by Lessor shall relieve Lessee of its obligations hereunder.

### ARTICLE XIII

#### EVENTS OF DEFAULT AND REMEDIES

**Section 13.01. Events of Default Defined.** The following shall be "Events of Default" under this Lease and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Failure by Lessee to pay any Rental Payment or other sums required to be paid hereunder at the time specified therein; and

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other the obligation to pay money, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the Default is corrected.

(c) Any representation or warranty made by Lessee hereunder shall be untrue as of the date made.

(d) Lessee makes, permits, or suffers any unauthorized assignment, transfer, or other disposition of this Lease or any interest herein, or any part of the Equipment or any interest therein.

(e) Lessee becomes insolvent; or admits in writing its inability to pay its debts as they mature; or applies for, consents to or acquiesces in the appointment of a trustee, receiver, or custodian for Lessee or a substantial part of its property; or, in the absence of such application, consent, or acquiescence, a trustee, receiver, or custodian is appointed for Lessee or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Lessee and, if instituted against Lessee, is consented to or acquiesced in by Lessee or is not dismissed within sixty (60) days.

**Section 13.02. Remedies on Default.** Whenever any Event of Default referred to in Section 13.01 hereof shall have happened and be continuing, the Lessor shall have the right, at its or their option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) Enforce this Lease by appropriate action to collect amounts due or to become due hereunder, by acceleration of any amounts due, or action to cause Lessee to perform



its other obligations hereunder in which event Lessee shall be liable for all costs and expenses incurred by Lessor.

(b) Take possession of the Equipment, without demand or notice and without court order or any process of law, and remove and relet the same for Lessee's account, in which event Lessee waives any and all damages resulting there from; and shall be liable for all costs and expenses incurred by Lessor in connection therewith; and shall pay to Lessor the difference, if any, between the amounts to be paid pursuant to Exhibit A less the amounts received and to be received by Lessor in connection with any such reletting in the event that such figure is a positive figure; and waives the right to receive the difference.

(c) Terminate this Lease and repossess the Equipment, in which event Lessee shall be liable for any amounts payable hereunder through the date of such termination and all costs and expenses incurred by Lessor in connection therewith plus the amount by which the applicable Option Purchase Price (calculated as if the option to purchase was exercised as of the date of termination) exceeds the then value of the Equipment.

(d) Sell the Equipment or any portion thereof for Lessor's account at public or private sale, for cash or credit, without demand or notice to Lessee of Lessor's intention to do so or relet the Equipment for a term and a rental which may be equal to, greater than, or less than the rental and term provided herein. If the proceeds from any such sale or rental payments received under a new agreement made for the periods prior to the expiration of this Lease are less than the sum of: (i) the costs of such repossession, sale, relocation, storage, reconditioning, reletting and reinstallation (including but not limited to reasonable attorneys' fees); (ii) the unpaid principal balance derived from Exhibit A as of the last preceding Rental Payment Date specified in Exhibit A; and (iii) any past due amounts hereunder (plus interest on such unpaid principal balance at the Default Rate), all of which shall be paid to Lessor, Lessor shall retain all such proceeds, and Lessee shall remain liable for any deficiency.

(e) Pursue and exercise any other remedy available at law or in equity. In all events Lessee shall be liable for any and all Costs and Expenses incurred by Lessor in connection with the exercise of any remedies. "Costs and Expenses," as that term is used herein, shall mean, to the extent allowed by law: (i) reasonable attorneys' fees if this Lease is referred for collection to an attorney who is not a salaried employee of Lessor or the holder of this Lease; (ii) court costs and disbursements including such costs in the event of any action necessary to secure possession of the Equipment; and (iii) actual and reasonable out-of-pocket expenses incurred in connection with any repossession or foreclosure, including costs of storing, reconditioning, and reselling the Equipment, subject to the standards of good faith and commercial reasonableness set by the Uniform Commercial Code. Lessee waives all rights under all exemption laws.

(f) Lessee gives Lessor permission to enter upon any property where the Equipment is or may be located and/or stored for purposes of taking possession of same. In the event that Lessor takes possession of the Equipment, Lessor shall have the right to take possession of and sell any and all property located thereon and/or therein.

**Section 13.03. Termination.** Unless Lessee has properly exercised its option to purchase pursuant to Article IX hereof, Lessee shall, upon the expiration of the term of this

Lease or any earlier termination hereof pursuant to the terms of this Lease, deliver the Equipment to Lessor unencumbered and in at least as good condition and repair as when delivered to Lessee, ordinary wear and tear resulting from proper use alone excepted, to such location, as Lessor shall designate at or within a reasonable distance from the general location of the Equipment. If Lessee fails to deliver the Equipment to Lessor, as provided in this Section 13.03, on or before the date of termination of this Lease, Lessee shall pay to Lessor upon demand, for each month during the hold-over period, an amount equal to highest amount due during the term of this Lease as a Rental Payment.

**Section 13.04. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article XIII it shall not be necessary to give any notice, other than such notice as may be required in this Article XIII.

## ARTICLE XIV

### MISCELLANEOUS

**Section 14.01. Force Majeure.** If by reason of Force Majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in Default during the continuance of such inability. The term "Force Majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

**Section 14.02. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, or by reputable overnight courier to the parties. Such notice shall be given to the parties at their respective addresses designated on the signature page of this Lease or at such other address as either party may hereafter designate

**Section 14.03. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

**Section 14.04. Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 14.05. Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 14.06. Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Colorado wherein Lessee is located.

**Section 14.07. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

**Section 14.08. JURY TRIAL WAIVER.** ALL PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY AND ALL LITIGATION RELATED TO AND/OR ARISING OUT OF THIS LEASE, ANY AGREEMENTS RELATED TO THIS LEASE, AND/OR THE TRANSACTION CONTEMPLATED BY THIS LEASE.

**Section 14.09. LIMITATION OF REMEDIES AGAINST LESSOR.** LESSOR SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OF BUSINESS, LOSS OF PROFITS, CONSEQUENTIAL DAMAGES OR OTHER DAMAGE CAUSED BY AND OR RELATED TO THIS LEASE AND/OR THE EQUIPMENT INCLUDING BUT NOT LIMITED TO: TIME LOST IN REPAIR OR REPLACING ANY PROPERTY, IRRESPECTIVE OF THE CAUSE THEREOF; FAILURE OR DELAY IN DELIVERING ANY PROPERTY LEASED OR TO BE LEASED HEREUNDER; FAILURE TO PERFORM ANY PROVISION HEREOF; FIRE OR OTHER CASUALTY; RIOT, STRIKE OR OTHER LABOR DIFFICULTY; GOVERNMENTAL REGULATIONS OR RESTRICTIONS; THEFT, DAMAGE TO, LOSS OF, DEFECT IN OR FAILURE OF ANY PROPERTY LEASED HEREUNDER; OR ANY OTHER CAUSE WHETHER OR NOT DUE TO NEGLIGENCE OR BEYOND LESSOR'S CONTROL. THERE SHALL BE NO ABATEMENT OR APPORTIONMENT OF MONTHLY RENTAL PAYMENTS AT ANY TIME OR FOR ANY REASON EXCEPT AS SPECIFICALLY ALLOWED BY THE TERMS OF THIS LEASE.

**Section 14.10. Time is of the Essence.** Time is of the essence. No covenant or obligations hereunder to be performed by Lessee maybe waived except by the written consent of Lessor, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Lessor from invoking such remedy at any later time prior to Lessee's cure of the condition giving rise to such remedy. Lessor's rights hereunder are cumulative and not alternative.

**Section 14.11. No Third Party Beneficiaries.** There are no third party beneficiaries of this Lease and/or the transaction contemplated by this Lease.

**Section 14.12. Savings Clause.** The parties acknowledge that this Lease is subject to and shall be implemented in accordance with Section 20 of Article X of the Constitution of Colorado. To that end, any provision of the Lease (or any exhibit, amendment, or addendum hereto) that requires payment of any nature in fiscal years subsequent to the current Fiscal Year, and for which there are not present cash reserves pledged irrevocably for purposes of the

payment of such obligations, shall be contingent upon future appropriation by the Lessee of sufficient funds for purposes of payment of such obligations for any future Fiscal Year. Any provision of the Lease (or any exhibit, amendment, or addendum hereto) that is contrary or inconsistent with this paragraph shall be deemed to be void and of no force and effect, but shall not invalidate or render unenforceable any other provision hereof.

**<<Signatures on Next Page>>**

**IN WITNESS WHEREOF**, Lessor has executed this Lease in its corporate name and attested by its duly authorized officers and Lessee has caused this Lease to be executed in its corporate name with its corporate seal hereunto affixed and attested by its duly authorized officers. All of the above occurred as of the date first above written.

**LESSOR:**

**NBH BANK**, a Colorado state bank

\_\_\_\_\_  
By: Sherry Villafane  
Title: Vice President

Address for Notices:  
7800 E. Orchard Road, Suite 300  
Greenwood Village, CO 80111  
Attn: Sherry Villafane, Vice President

**LESSEE:**

**TOWN OF FAIRPLAY**

\_\_\_\_\_  
By: Gabby Lane  
Title: Mayor

Address for Notices:  
901 Main Street  
Fairplay, CO 80440  
Attn: Tina Darrah, Town Administrator

**ATTEST:**

**APPROVED AS TO FORM:**

**EXHIBIT A - LEASE TERMS**

1. Lessee: Town of Fairplay
2. Commencement Date: July 22 2016
3. Final Expiration Date: July 22, 2026
4. Rental Payment Dates: Beginning January 15, 2017 and on each July 15 and January 15 thereafter until Final Expiration Date or prior redemption.
5. Applicable Yield Rate: 2.84%
6. Default Rate: Tax-Exempt Fixed Rate + 3.00% per annual until the Default is cured.
7. Financial Reporting Requirements:
  - a. Annually, Lessee shall deliver to Lessor copies of Lessee's audited financial statements and related audit report prepared by an independent public accounting firm acceptable to Lessor upon the first to occur of (i) two (2) weeks after the final audit is issued by the auditors or (ii) 210 Days after the end of Lessee's Fiscal year.
  - b. Annually, Lessee shall deliver to Lessor a copy of the Lessee's Annual Budget within thirty (30) days after the end of Lessee's Fiscal Year, which Annual Budget shall illustrate the Rental Payments due to the Lessor during the period covered by the Annual Budget.
8. Financial Covenants: N/A
9. Lessee's Fiscal/Budget Year: December 31
10. Rental Payment Schedule and Option Purchase Price:

Payment No.	Payment Date	Principal	Interest	Total Rental Payment	Balance	Option Purchase Price
1	January 15, 2017	9,924.34	3,070.75	12,995.09	9,924.34	215,075.63
2	July 15, 2017	9,941.02	3,054.07	12,995.09	9,941.02	205,134.62
3	January 15, 2018	10,082.18	2,912.91	12,995.09	10,082.18	195,052.44
4	July 15, 2018	10,225.35	2,769.74	12,995.09	10,225.35	184,827.09
5	January 15, 2019	10,370.55	2,624.54	12,995.09	10,370.55	174,456.55
6	July 15, 2019	10,517.81	2,477.28	12,995.09	10,517.81	163,938.74

7	January 15, 2020	10,667.16	2,327.93	12,995.09	10,667.16	153,271.58
8	July 15, 2020	10,818.63	2,176.46	12,995.09	10,818.63	142,452.95
9	January 15, 2021	10,972.26	2,022.83	12,995.09	10,972.26	131,480.69
10	July 15, 2021	11,128.06	1,867.03	12,995.09	11,128.06	120,352.62
11	January 15, 2022	11,286.08	1,709.01	12,995.09	11,286.08	109,066.54
12	July 15, 2022	11,446.34	1,548.75	12,995.09	11,446.34	97,620.20
13	January 15, 2023	11,608.88	1,386.21	12,995.09	11,608.88	86,011.31
14	July 15, 2023	11,773.73	1,221.36	12,995.09	11,773.73	74,237.58
15	January 15, 2024	11,940.92	1,054.17	12,995.09	11,940.92	62,296.67
16	July 15, 2024	12,110.48	884.61	12,995.09	12,110.48	50,186.19
17	January 15, 2025	12,282.45	712.64	12,995.09	12,282.45	37,903.74
18	July 15, 2025	12,456.86	538.23	12,995.09	12,456.86	25,446.89
19	January 15, 2026	12,633.74	361.35	12,995.09	12,633.74	12,813.14
20	July 15, 2026	12,813.16	181.93	12,995.09	12,813.16	0.00
<b>TOTALS</b>		<b>225,000.00</b>	<b>34,901.80</b>	<b>259,901.80</b>		

**LESSEE:**

**TOWN OF FAIRPLAY**

**LESSOR:**

**NBH BANK, a Colorado state bank**

By: Gabby Lane  
 Its: Mayor

By: Sherry Villafane  
 Its: Vice President

**EXHIBIT B – EQUIPMENT**

<u>No.</u>	<u>Year</u>	<u>Make/Model</u>	<u>Purchase Price</u>	<u>Taxable Value</u>	<u>VIN</u>	<u>GASB Useful Life</u>	<u>Remaining Useful Life Estimate</u>
1	2009	Chevy Tahoe	\$ 10,500	\$ 22,389	1GNFK13089R253119	5	\$ 7,332.54
2	1990	Dump Truck	\$ 29,250	\$ 29,250	1FDXK84A3LVA04251	5-10	\$ 571.84
3	2006	Chevy Tahoe	\$ 30,051	\$ 35,853	1GNEK13Z06R145048	5	\$ 15,701.65
4	2016	Ford Truck	\$ 57,227	\$ 38,388	1FDUF5HT1GEA38924	5	\$ 54,365.65
5	2010	Chevy Tahoe	\$ 27,073	\$ 33,256	1FDUF5HT1GEA38925	5	\$ 19,289.51
6	1998	JD Backhoe	\$ 62,194	\$ 62,194	1FDUF5HT1GEA38926	5-10	\$ 1,585.95
7	2015	Skidster	\$ 73,835	\$ 73,835	Various Serial Numbe	5	\$ 70,143.53
8	2013	Chevy Tahoe	\$ 30,838	\$ 30,838	1GNSK2E07DR272979	5	\$ 53,175.87
<b>TOTAL</b>			<b>\$ 320,968</b>	<b>\$ 326,003</b>			<b>\$ 222,166.54</b>



## MONTHLY STAFF REPORT

### Wastewater Treatment Plant Performance June 2016

Influent flow: Treatment Plant Design flow 0.3 MGD  
Average Flow 0.12 MGD % Capacity 40%  
Maximum Flow 0.19 MGD % Capacity 63%

BOD  
Influent 316 mg/l Effluent 5 mg/l %Removal 98%

Suspended Solids  
Influent 197 mg/l Effluent 14 mg/l %Removal 93%

Ammonia  
Influent 46.79 Effluent .13 mg/l % Removal 97%

E.coli  
Limit: 1,920 Average Geometric mean/ 3,840 Maximum Geometric Mean  
Colonies Effluent 870 Colonies % Removal 78%

### Waste Water system

Wasting pump is completed and is working very well. E.coli removal wasn't as good on this testing cycle. Plant is running at optimum. I am thinking that I didn't let effluent run long enough from sample port before taking sample.

### Water System

Staff continues to maintain a 0.20 chlorine residual at the end of the system as required by the State. The town is still showing less water usage since the repair of water main.

### Public Works

Public Works crew is working diligently on all aspects of town maintenance and making sure town events run smoothly.

