

**AGENDA for a Regular Meeting
of the Board of Trustees of the Town of Fairplay, Colorado
Monday, January 3, 2022, at 6:00 p.m. at the Fairplay Town Hall Meeting Room
901 Main Street, Fairplay Colorado**

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ROLL CALL**
- IV. APPROVAL OF AGENDA**
- V. 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 MINUTES – November 15, 2021 and December 6, 2021.**
 - B. Should the Board Approve Adoption of Resolution No. 1, Series of 2022, entitled, "A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, ESTABLISHING DESIGNATED PUBLIC PLACES FOR THE POSTING OF MEETING NOTICES AS REQUIRED BY THE COLORADO OPEN MEETINGS LAW."?**
- VI. CITIZEN COMMENTS**
- VII. NEW BUSINESS**
 - A. Should the Board Approve Adoption of Resolution No. 2, Series of 2022, entitled, "A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO APPROVING A SERVICE AGREEMENT BETWEEN THE TOWN OF FAIRPLAY AND UTILITY ASSOCIATES, INC FOR BODYWORN CAMERA EQUIPMENT AND SERVICES FOR THE FAIRPLAY POLICE DEPARTMENT."?**
 - B. Should the Board Approve Adoption of Resolution No. 3, Series of 2022, entitled, "A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WARM SPRINGS CONSULTING, L.L.C. FOR OPERATOR IN RESPONSIBLE CHARGE (ORC) SERVICES FOR THE TOWN OF FAIRPLAY WATER TREATMENT FACILITY."?**
 - C. Should the Board Approve Adoption of Resolution No. 4, Series of 2022, entitled, "A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WARM SPRINGS CONSULTING, L.L.C. FOR OPERATOR IN RESPONSIBLE CHARGE SERVICES (ORC) FOR THE TOWN OF FAIRPLAY WASTEWATER TREATMENT FACILITY."?**
 - D. Should the Board Approve an Amendment to the Professional Services Agreement with Hunn Planning & Policy L.L.C. regarding proposed rate increases.**
 - E. Should the Board Approve an Amendment to the Professional Services Agreement with Hahn Water Resources, L.L.C. agreeing to an extension of the term to February 28, 2022.**
 - F. Review of and discussion regarding Town of Fairplay Fee Schedule.**
- VIII. BOARD OF TRUSTEE AND STAFF REPORTS**
- IX. ADJOURNMENT.**

Upcoming Meetings/Important Dates

<i>1st Day to Take Out Candidate Petition for Board of Trustees</i>	<i>January 4, 2022</i>
<i>Board of Trustees Work Session on Short Term Rentals</i>	<i>January 10, 2022</i>
<i>Martin Luther King, Jr. Holiday – Town Offices Closed</i>	<i>January 17, 2022</i>
<i>Board of Trustees Regular Meeting CANCELLED</i>	<i>January 17, 2022</i>
<i>Last Day to Turn in Candidate Petition for Board of Trustees</i>	<i>January 20, 2022</i>
<i>Board of Trustees Regular Meeting</i>	<i>February 7, 2022</i>
<i>President's Day Holiday – Town Offices Closed</i>	<i>February 21, 2022</i>
<i>Board of Trustees Regular Meeting CANCELLED</i>	<i>February 21, 2022</i>
<i>Fairplay Mountain Mardi Gras Celebration</i>	<i>February 26, 2022</i>

This agenda may be amended. Posted at Fairplay Town Hall, Fairplay Public Library, Fairplay Post Office, and on The Town of Fairplay Website (www.fairplayco.us) on Thursday, December 30, 2021.

**MINUTES OF A REGULAR MEETING OF THE
FAIRPLAY BOARD OF TRUSTEES
November 22, 2021**

CALL TO ORDER

A Regular Meeting of the Board of Trustees for the Town of Fairplay was called to order by Mayor Frank Just on Monday, November 22 2021 at 6:00 p.m. in the Council Chambers located in the Fairplay Town Hall, 901 Main Street, having previously been posted in accordance with Colorado Open Records law.

PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Just proceeded with the pledge of allegiance, followed by the roll call which was answered by Mayor Pro Tem Scott Dodge, Mayor Frank Just and Trustees Eve Stapp, Josh Voorhis (*by phone*) and Peter Lynn.

Staff in attendance were Town Treasurer Kim Wittbrodt, Police Chief Bo Schlunsen, Public Works Director Donovan Graham, Town Attorney Nina Williams and Town Administrator/Clerk Janell Sciacca.

APPROVAL OF AGENDA

Trustee Lynn inquired about fees paid to Hahn Water Resources and SGM Engineering. Treasurer Wittbrodt explained that Hahn is a consultant performing an evaluation of water plant while SGM is the Town's contract engineering firm. Mayor Just added Hahn is helping conduct testing of the Town's infiltration gallery and Town Administrator Sciacca added that many of the fees associated with SGM are also categorized as "bill-backs" and are reimbursed to the Town by project applicants.

Motion #1 by Trustee Dodge, seconded by Trustee Voorhis, that the agenda be adopted as written. A roll call vote was taken: Stapp – aye, Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

CONSENT AGENDA

- A. **APPROVAL OF MINUTES** – November 1, 2021
- B. **APPROVAL OF EXPENDITURES**—Approval of bills of various Town funds in the amount of **\$39,861.76.**

Mayor Just also noted the amended November 1, 2021 minutes that were placed at each Trustees seat.

Motion #2 by Trustee Lynn, seconded by Trustee Dodge, that the Consent Agenda be approved with the November 1, 2021 minutes as amended. A roll call vote was taken: Stapp – aye, Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

CITIZEN COMMENTS

None.

UNFINISHED BUSINESS

None.

PUBLIC HEARINGS

- A. **CONTINUED FROM NOVEMBER 1, 2021** - 2021FY Amended and 2022FY Proposed Budgets for All Funds of the Town of Fairplay, Colorado.

Just opened the Public Hearing at 6:05 PM noting this was continued from the previous meeting of November 1, 2022. Town Treasurer Wittbrodt reminded this was the 2nd to last public hearing and requested that upon completion of the evening's discussions, the hearing be continued to December 6. Wittbrodt advised the budget in the packet had been updated to reflect current numbers and the one item that was discussed at the previous meeting which was fencing for the wastewater plant had been scheduled for a cost of \$8,500. Town Administrator Sciacca noted that the Police Department still planned to hire a full-time Police Officer and the bypass at the block house would also be done if parts came in and both were included in the amended 2021 budget. There were no questions from the Trustees while Mayor Just inquired if any costs had been obtained on replacing the dais with modular type furniture. Wittbrodt and Sciacca replied they would include monies and find something. There were no public comments made in favor or opposition of the amended or proposed budgets.

Motion #3 by Trustee Dodge, seconded by Trustee Stapp, that the Public Hearing on the 2021 FY amended and 2022FY Proposed Budgets be continued to December 6, 2021. A roll call vote was taken: Stapp – aye, Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

NEW BUSINESS

- A. Should the Board Approve Emergency Ordinance No. 7, Series of 2021, entitled, "**AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO IMPOSING A TEMPORARY MORATORIUM ON THE SUBMISSION, ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS FOR A SHORT-TERM RENTAL LICENSE, AND DECLARING AN EMERGENCY.**"?

Town Attorney Williams presented noting the passage of the emergency ordinance would allow the Board time to investigate and discuss different options for regulating short-term regulations. These would be discussed at an upcoming Work Session. Williams advised 4 affirmative votes were required for the ordinance to become effective immediately. Town Administrator Sciacca advised that if adopted, the ordinance would be published in the newspaper, distributed in the December water bills and the Town's upcoming newsletter.

Mayor Just opened the floor to discussion. Trustee Dodge felt housing and short-term rentals should be separated out and stated that he did not believe the Town really had a housing stock. He felt the issue of short-term rentals could be regulated appropriately with a new license and updated fees but it was not the main reason for the shortage of housing. Mayor Just disagreed and reminded of the past discussions held at prior meetings regarding the housing stock shortage. Trustee Lynn agreed there was clearly a housing stock shortage. Dodge again stated his position that the restriction on or regulation of short-term rentals was not really going create more available units and he would like to see an entirely separate discussion on that subject. Mayor Just felt that short term rentals did take homes off the market that would otherwise be available for purchase. Dodge asserted that restricting short term rentals only impacted what someone could do with their property but still did not create more housing availability. Mayor Just felt the Town was being proactive in keeping corporations from buying up units for rentals the Town would run out of available housing. Following additional discussion, the Board generally agreed to move forward with the ordinance and schedule a work session on the subject. Trustee Stapp announced she was conflicted due to the fact she was being faced with selling her home and could see both sides of the argument. Town Attorney Williams provided basic guidance to Stapp and then Dodge questioned if the Board could move forward with a work session without the moratorium. Williams replied the Board could do that but the granting of new licenses would continue. Mayor Just added that the moratorium would simply put a "pause" on the granting of new licenses and did not equate to any legislative action while giving the Town time to further discuss the matter and determine what it may be up against. Trustee Voorhis felt the temporary pause did not indicate what decision the Board would ultimately make but just

provided time to discuss which direction the Board felt was best for the Town. Mayor Just also reminded the related matter he felt strongly about was the overall safety of the community and visitors citing the need for additional regulations and inspections that needed to be addressed. Town Administrator advised the effective date in the ordinance needed to be changed from November 15, 2021 to November 22, 2021.

Motion #4 by Trustee Voorhis, seconded by Trustee Lynn, to approve Ordinance No. 7, Series 2021 with the start date amended to November 22, 2021. A roll call vote was taken: Stapp – aye, Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

- B. Should the Board Approve Ordinance No. 8, Series of 2021, entitled, **“AN ORDINANCE OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO AMENDING CHAPTER 16 OF THE FAIRPLAY MUNICIPAL CODE, ADDING ARTICLE XXVIII, REGARDING THE PROHIBITION OF MEDICAL AND RECREATIONAL MARIJUANA.”?**

Town Administrator Sciacca presented reviewing the Staff Report. She advised that she discovered the previously existing regulations were overwritten when the UDC was adopted in 2015 upon an inquiry regarding the Town’s position allowing such uses. Reinstating the previously existing code section was a simple housekeeping matter and upon approval of the ordinance and publication in the newspaper, the signed document would be sent to Municode for updating of the Town’s online code. She recommended approval of Ordinance No. 8, Series 2021, as presented. Trustee Lynn inquired about the shop on US 285 and was advised that establishment was just outside the Town limits into Park County.

Motion #5: by Trustee Dodge, seconded by Trustee Stapp to approve Ordinance No.8, Series 2021, as presented. A roll call vote was taken: Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

BOARD OF TRUSTEE AND STAFF REPORTS

Chief Schlusen distributed and reviewed a written report regarding the status on code violations advising progress was slow but things were happening and he would continue to provide updates. Schlusen reported that he had offered his Officer position to a 9-year El Paso County Deputy veteran who accepted and would be starting around the 1st of December.

Public Works Director Graham advised the Town welcomed Sean Kleinschmidt to the team and he was a good fit. He also reported that the crew had been busy potholing, installed a stop sign base at Crawford and 6th and would put up the sign as soon as received. Graham advised that he started looking outside Colorado for graders and found a fleet of 2014 CAT M2-140 models in South Dakota for \$40,000-\$50,000 less than any he has looked at in Colorado so he would be making a trip to take a look next month. He also noted a handout from Events Coordinator Bullock of next week’s Christmas events.

Town Administrator Sciacca reminded of Town Hall closures for the upcoming holidays, reported the proof of insurance was received for the stone building move so that was getting closer and she would be attending multiple transportation related meetings in early December. The Board discussed dates in January for the short-term rental work session and decided to schedule it on January 10, 2022 at 4 PM. Sciacca advised there would be the need for multiple other work sessions after in 2022 on water after the infiltration gallery testing was complete, adoption of the Public Works manual, UDC updates, next year’s marketing plan, and flood plain mapping.

Trustee Dodge reported the CDOT Open House on November 18 was well attended and pointed out some additional concerns including access to US 285 by the Fire District. He also wanted to further discuss housing at a future work session.

Mayor Just felt the CDOT meeting went well, and the current plan was widely accepted. Most concerns voiced were about Platte Drive. He was pleased with the overall turnout and feedback. Sciacca reminded that there would be at least one additional meeting after the contractor was selected.

Mayor Just took opportunity extend well wishes to everyone as the Thanksgiving holiday approached. He specifically thanked the Board for their attendance at meetings and service to the community.

ADJOURNMENT

There being no further business before the Board, Mayor Just declared that the regular meeting adjourned at 7:30 p.m.

BOARD OF TRUSTEES, FAIRPLAY, COLORADO

Frank Just, Mayor

ATTEST:

Janell Sciacca, Town Clerk

**MINUTES OF A REGULAR MEETING OF THE
FAIRPLAY BOARD OF TRUSTEES
December 6, 2021**

CALL TO ORDER

A Regular Meeting of the Board of Trustees for the Town of Fairplay was called to order by Mayor Frank Just on Monday, December 6, 2021 at 6:04 p.m. in the Board Room located in the Fairplay Town Hall, 901 Main Street, having previously been posted in accordance with Colorado Open Records law.

PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Just proceeded with the pledge of allegiance, followed by the roll call which was answered by Mayor Frank Just and Trustees Josh Voorhis and Peter Lynn. Just announced that Stapp was excused from attendance due to illness and Trustee Dodge would be arriving late due to the power outage.

Staff in attendance were Town Treasurer Kim Wittbrodt, Police Chief Bo Schlunsen, Public Works Director Donovan Graham and Town Administrator/Clerk Janell Sciacca.

APPROVAL OF AGENDA

Motion #1 by Trustee Voorhis, seconded by Trustee Lynn, that the agenda be adopted as written. A roll call vote was taken: Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

CONSENT AGENDA

- A. APPROVAL OF EXPENDITURES**—Approval of bills of various Town funds in the amount of **\$300,571.41.**

Motion #2 by Trustee Lynn, seconded by Trustee Voorhis, that the Consent Agenda be approved with the as written. A roll call vote was taken: Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

CITIZEN COMMENTS

Phil Brogan, South Park Chamber of Commerce President, advised the Board that due to lack of participation and volunteers they would be discussing and considering dissolution of the Chamber at an upcoming meeting being held at Town Hall on December 15, 2021 at 3:30 PM. He advised that all members were notified of the upcoming meeting by email, USPS mail and Facebook.

Mayor Pro Tem Dodge arrived at 6:08 p.m.

PROCLAMATION

- A.** Mayor's Proclamation Nominating the King and Queen Candidates for the Fairplay Mountain Mardi Gras to be held Saturday, February 26, 2022.

Mayor Just invited the King & Queen candidates to stand in front of the dais. He read the Proclamation into the record and invited each to provide information on the specific charity they were raising money for. Just advised the previous event's winner raised over \$11,000 while the total charitable giving was almost \$19,000 for local organizations and he pledged \$100 to each of their causes stating he looked forward to seeing them all on February 26 at the Mardi Gras.

UNFINISHED BUSINESS

- A. Should the Board Approve Adoption of Resolution No. 24, Series of 2021, entitled, “**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO APPROVING A MEMORANDUM OF AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE PURCHASE OF TOWN OWNED RIGHT-OF-WAY AND GRANTING OF TEMPORARY EASEMENTS FOR THE US 285 AND STATE HIGHWAY 9 INTERSECTION IMPROVEMENTS AND WIDENING PROJECT STA M420-001.**”?

Town Administrator Sciacca reminded this item was previously tabled from November 1 until after the Open House which was held on November 18. She advised that CDOT contacted her stating the Town was one of the last outstanding agreements for the US 285 and Highway 9 improvement project. She recommended approval as presented and requested a roll call vote.

Motion #3 by Trustee Dodge, seconded by Trustee Voorhis, that Resolution No. 24, Series 2021, be approved as presented. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

PUBLIC HEARINGS

- A. **CONTINUED FROM NOVEMBER 22, 2021** - 2021FY Amended and 2022FY Proposed Budgets for All Funds of the Town of Fairplay, Colorado.

Mayor Just requested a motion to reopen the Public Hearing.

Motion #4 by Trustee Dodge, seconded by Trustee Voorhis, to reopen the Public Hearing on the 2021FY Amended and 2022FY Proposed Budgets for All Funds of the Town of Fairplay, Colorado. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

Town Administrator Sciacca reviewed several items that had been added either at the request of the Board or as needed for regular business. She recommended approval of all associated resolutions as presented following the final Public Hearing and questions from the Board. There being no public in attendance wishing to speak, the Mayor requested a motion to close the Public Hearing.

Motion #5 by Trustee Dodge, seconded by Trustee Voorhis, to close the Public Hearing on the 2021FY Amended and 2022FY Proposed Budgets for All Funds of the Town of Fairplay, Colorado. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

There were no questions from the Board for Staff and Mayor Just announced each resolution for a motion.

1. Should the Board Approve Adoption of Resolution No. 25, series of 2021, entitled, “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, SUMMARIZING EXPENDITURES AND REVENUES FOR EACH FUND AND ADOPTING AN AMENDED 2021 BUDGET FOR THE TOWN OF FAIRPLAY, COLORADO.**”?

Motion #6 by Trustee Voorhis, seconded by Trustee Lynn, to approve adoption of Resolution No. 25, series of 2021 as presented . A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

2. Should the Board Approve Adoption of Resolution No. 26, series of 2021, entitled, “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS AND SPENDING AGENCIES, IN**

THE AMOUNTS AND FOR THE PURPOSES AS SET FORTH BELOW, FOR THE TOWN OF FAIRPLAY, COLORADO, FOR THE AMENDED 2021 BUDGET.”?

Motion #7 by Trustee Voorhis, seconded by Trustee Dodge, to approve adoption of Resolution No. 26, series of 2021 as presented. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

3. Should the Board Approve Adoption of Resolution No. 27, series of 2021, entitled, **“A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, SUMMARIZING EXPENDITURES AND REVENUES FOR EACH FUND AND ADOPTING A BUDGET FOR THE TOWN OF FAIRPLAY, COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY 2022 AND ENDING ON THE LAST DAY OF DECEMBER 2022.”?**

Motion #8 by Trustee Voorhis, seconded by Trustee Lynn, to approve adoption of Resolution No. 27, series of 2021 as presented. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

4. Should the Board Approve Adoption of Resolution No. 28 series of 2021, entitled, **“A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, LEVYING GENERAL PROPERTY TAXES FOR THE YEAR 2021 TO HELP DEFRAID THE COST OF GOVERNMENT FOR THE TOWN OF FAIRPLAY, COLORADO, FOR THE 2022 BUDGET YEAR.”?**

Motion #9 by Trustee Voorhis, seconded by Trustee Lynn, to approve adoption of Resolution No. 28, series of 2021 as presented. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

5. Should the Board Approve Adoption of Resolution No. 29, series of 2021, entitled, **“A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS AND SPENDING AGENCIES, IN THE AMOUNTS AND FOR THE PURPOSES AS SET FORTH BELOW, FOR THE TOWN OF FAIRPLAY, COLORADO FOR THE 2022 BUDGET YEAR.”?**

Motion #10 by Trustee Voorhis, seconded by Trustee Lynn, to approve adoption of Resolution No. 29, series of 2021 as presented. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

Mayor Just complimented and congratulated Staff for the smooth, easy and transparent process this year. Administrator Sciacca complimented Treasurer Wittbrodt on a phenomenal job for stepping up and leading the budget process during the Staff transitions.

NEW BUSINESS

- A. Should the Board Approve Adoption of Resolution No. 30, series of 2021, entitled, **“A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO CERTIFYING DELINQUENT UTILITY ACCOUNTS TO THE PARK COUNTY TREASURER.”?**

Treasurer Wittbrodt announced this is the opportunity for the Town to collect on past due utility bills. The amounts are submitted to the County Treasurer and added to property tax bills. Wittbrodt advised she reached out to tenants and owners first by phone and then by mail before taking this step. She recommended approval as presented.

Motion #11 by Trustee Dodge, seconded by Trustee Lynn, to approve adoption of Resolution No. 30, series of 2021 as presented. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

- B. Should the Board Approve Adoption of Resolution No. 31, series of 2021, entitled, “**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO DETERMINING THAT THE REGULAR MUNICIPAL ELECTION TO BE HELD ON APRIL 5, 2022 SHALL BE A MAIL BALLOT ELECTION.**”?

Administrator Sciacca presented providing a brief overview of the Staff Report and requested approval as written. She noted that information was being put out in the water bills and newsletter as well as postings and newspaper publication to get the word out about the open seats. Mayor Just inquired what the date in January was that kicked everything off. Sciacca replied January 4, 2022 was the first date nomination petitions could be taken out and the January newsletter would include additional details.

Motion #12 by Trustee Dodge, seconded by Trustee Voorhis, to approve adoption of Resolution No. 31, series of 2021 as presented. A roll call vote was taken: Dodge – aye; Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

BOARD OF TRUSTEE AND STAFF REPORTS

Chief Schlunsen reported that new Office Tom Flannery started with the Town yesterday. He advised that the PD had been busier over the last few weeks with domestic and school related issues, the Town would be entering into a contract for purchasing bodycams and he was confident a grant would be received to offset the total cost by 40% and he hoped the new car would be in by the end of December.

Public Works Director Graham advised new employee Kleinschmidt was a good fit and he complimented all his Staff on their hard work on the Town’s Christmas decorations. Graham advised Staff was also continuing to fill potholes and he would be heading to South Dakota tomorrow to look at graders. Mayor Just asked Graham to look at 5th Street.

Treasurer Wittbrodt felt the budget went well and Staff worked well together as a team to get it accomplished.

Administrator Sciacca advised her report was in the packet and noted at least 5 different matters that would need work sessions in 2022 with the first one being January 10 on short-term rentals. She complimented Staff on a job well done for Saturday’s Tree Lighting and the perfect weather.

Trustee Dodge advised he attended the CDOT CFR TPR meeting earlier in the day by Zoom and the good news is that years 1-4 are completed funded including Fairplay’s highway improvement project and mobility hub but years 5-10 may have to be scaled back due to lack of funding. He also reported that he and Sciacca also attended the PPACG Tri-County Study Stakeholder meeting at the County Building earlier in the day where good ideas were shared. He also wished everyone Happy Holidays!

Trustee Voorhis advised that someone left a couch in the Cohen Park Volleyball Court. He questioned the Town’s ability to provide Broadband in Town. Sciacca replied that funds were/had been available through DOLA to municipalities for private/public partnerships and she was planning to get on or set in on the County’s Broadband meetings to stay up to speed on what was going on. Voorhis also inquired if there was any news on the suggestions of asking the owner selling the property adjacent to the Boys & Girls Club about donating it back to the Club. Sciacca replied she did reach out to the real estate agent who

said he would certainly bring it up to the owner but felt it probably would not happen. She advised that she would follow up again the next time she had opportunity to speak with the agent. Sciacca reported that per some of Voorhis's previous comments, Staff had put information in the water bills and newsletter that the Town would be starting to crack down on the code violations in January following site visits.

Mayor Just reviewed the upcoming events and meetings list. He also shared thank you letters from the Edith Teter Elementary School children that visited Town Hall in November. Just closed by encouraging everyone to patronize the businesses donating to the Mardi Gras King & Queen candidates.

ADJOURNMENT

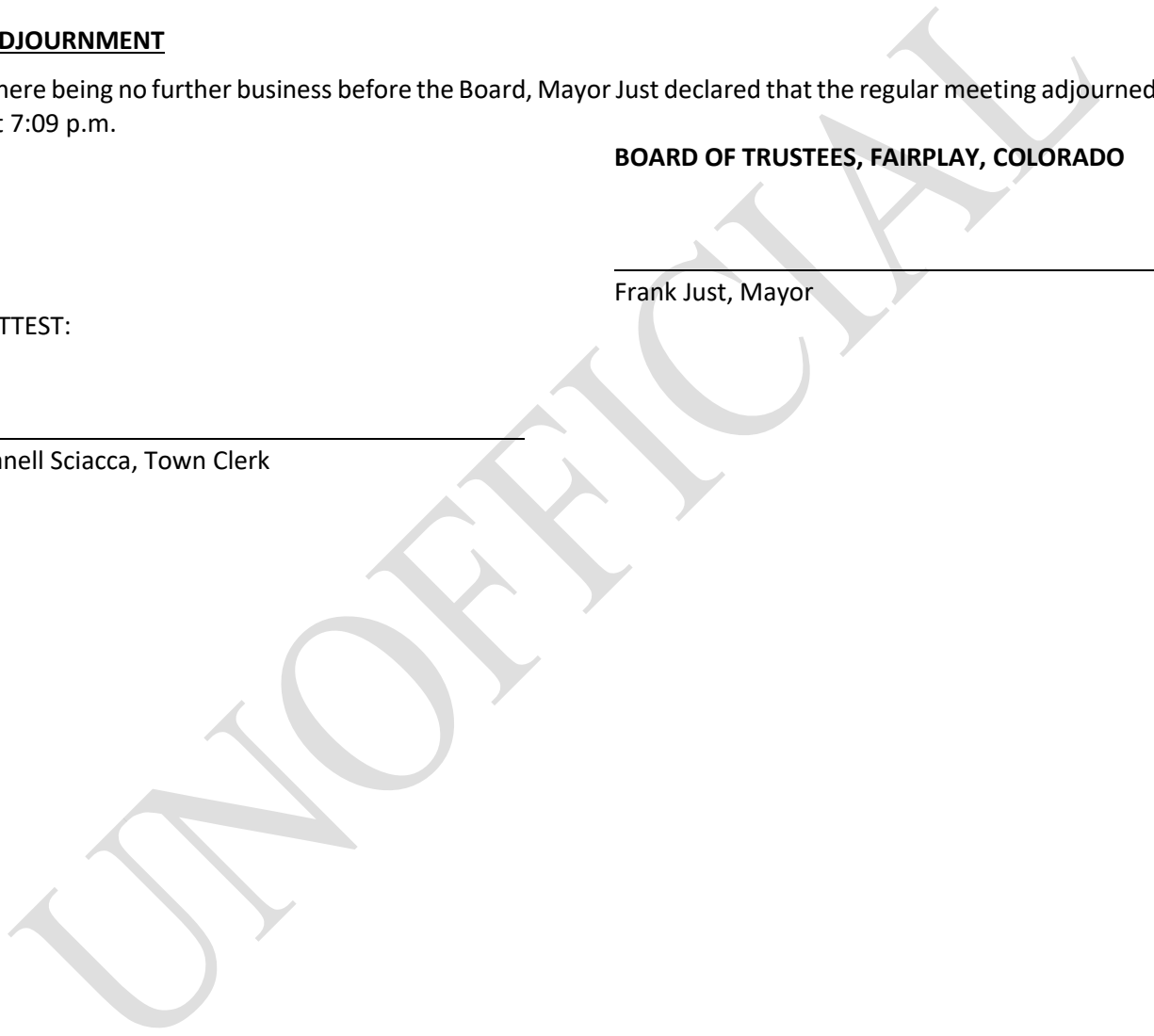
There being no further business before the Board, Mayor Just declared that the regular meeting adjourned at 7:09 p.m.

BOARD OF TRUSTEES, FAIRPLAY, COLORADO

Frank Just, Mayor

ATTEST:

Janell Sciacca, Town Clerk





MEMORANDUM

TO: Mayor and Board of Trustees
FROM: Janell Sciacca, Town Administrator/Clerk
RE: Consent Agenda Item A – Resolution 2022-1
DATE: January 3, 2022

Background:

C.R.S. 24-6-402(c) states “any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public” and further, “The public place or places for posting such notice shall be designated annually at the local public body’s first regular meeting of each calendar year.”

Therefore, Resolution No. 1, Series 2022 is presented for the Board’s consideration and to meet the requirements of the Colorado Open Records Law. There are no changes to the designated posting places which are Town Hall, the Town’s website (www.fairplayco.us), the Post Office and the Park County Library.

Recommendation:

Staff recommends approval of Resolution No. 1, Series 2022, presented by motion, second and a roll call vote.

Attachments:

- Resolution No. 1, Series 2022

TOWN OF FAIRPLAY, COLORADO

**RESOLUTION NO. 1
(Series 2022)**

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, ESTABLISHING DESIGNATED PUBLIC PLACES FOR THE POSTING OF MEETING NOTICES AS REQUIRED BY COLORADO OPEN MEETINGS LAW.

WHEREAS, Section 24-6-402(2)(c), C.R.S., (part of the Colorado “Sunshine Law”) requires that the Board of Trustees of the Town of Fairplay annually designate at its first regular meeting of each calendar year the public place or places for the posting of notice of its meetings; and

WHEREAS, the Board of Trustees of the Town of Fairplay wishes to continue providing public notice to its citizens at several convenient locations.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO THAT:

Section 1: The designated public place for the posting of meeting notices as required by the Colorado Open Meetings Law, C.R.S. 24-6-402(2)(c), shall be:

1. The Town of Fairplay Website (www.fairplayco.us);
2. The Fairplay Post Office located at 517 Hathaway Street;
3. The Fairplay Town Hall located at 901 Main Street; and
4. The Park County Library located at 400 Front Street.

Section 2: The Town Clerk shall be responsible for posting the required notices no later than twenty-four (24) hours prior to the holding of the meeting. All meeting notices shall include specific agenda information, where possible.

Section 3: This Resolution shall become effective upon adoption.

RESOLVED, APPROVED AND ADOPTED THIS 3RD DAY OF JANUARY, 2022.

TOWN OF FAIRPLAY, COLORADO

Frank Just, Mayor

ATTEST:

Janell Sciacca, Town Clerk



MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator/Clerk

RE: New Business Item A – BodyWorn Camera Equipment & Services Agmt

DATE: January 3, 2022

Background:

Beginning July 1, 2023, the [Enhance Law Enforcement Integrity Act](#) (SB20-217) requires all local law enforcement agencies to obtain and issue body-worn cameras to their Officers, except for those working in jails, as administrative or civilian staff, or those working in court rooms.

Chief Schlusen has investigated multiple suppliers and spend many hours determining which model he felt was the best option for use in Fairplay. Ultimately, he decided on the BodyWorn system and can explain his reasoning in detail and answer any questions you may have during your discussions and consideration. The Chief is hopeful that the Town can get all its necessary approval and documents in early to avoid falling behind some of the larger Departments that will be ordering hundreds of units.

Budget Impact:

The total cost of the package system is proposed at \$77,400.00 and payable over a 5-year period. However, I am pleased to let you know the Police Department applied and successfully received a grant of approximately \$31,000.00 to off-set that total cost and budget impact.

Recommendation:

Staff recommends approval of Resolution No. 2, Series 2022, as presented by motion, second and a roll call vote.

Attachments:

- Resolution No. 2, Series 2022
 - Exhibit A - Final Quote
 - Exhibit B – Service Pricing Proposal
 - Exhibit C – Customer Service Agreement

TOWN OF FAIRPLAY, COLORADO
RESOLUTION NO. 2
(Series of 2022)

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, AUTHORIZING THE EXECUTION OF A SERVICE AGREEMENT BETWEEN THE TOWN OF FAIRPLAY AND UTILITY ASSOCIATES, INC. FOR BODYWORN CAMERA EQUIPMENT AND SERVICES FOR THE FAIRPLAY POLICE DEPARTMENT.

WHEREAS, the Fairplay Police Department has negotiated an agreement with Utility Associates, Inc. for the purchase of BodyWorn camera equipment and related services for its Officers and Patrol Vehicles; and

WHEREAS, Utility Associates, Inc. has provided a proposal and represents it is qualified to provide such equipment at the proposed pricing and perform the services requested by the Town and as detailed in Exhibit A – Final Quote, Exhibit B – Service Pricing Proposal and Exhibit C – Customer Service Agreement; and

WHEREAS, the Board of Trustees has reviewed the documents and desires to enter into an agreement with Utility Associates, Inc. for equipment and services as specified in the proposal.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, THAT:

Section 1. The Board of Trustees hereby approves the attached proposal and service agreement and authorizes the Mayor and/or Town Administrator to execute same on behalf of the Town.

Section 2. Payment for equipment and services rendered shall be in an amount not to exceed \$77,400.00.

Section 3. This resolution shall become effective upon adoption.

RESOLVED, APPROVED, and ADOPTED this 3rd day of January, 2022.

TOWN OF FAIRPLAY, COLORADO

 Frank Just, Mayor

ATTEST:

 Janell Sciacca, Town Clerk

EXHIBIT A



Fairplay CO Police - Final Quote

Janell Sciacca
Town Administrator
jsciacca@fairplayco.us
719-836-2622 ext. 102

Bo Schlunsen
Chief
bschlunsen@fairplayco.us
719-836-2840

Reference: 20211207-234003684

Quote created: December 7, 2021

Quote expires: December 15, 2021

Quote created by: Brian Churchill

Business Manager

bchurchill@utility.com

+1 (470) 391-6452

Comments from Brian Churchill

Utility is honored the Fairplay, Colorado Police Department has chosen Utility's Bodyworn Solution for it's agency.

Products & Services

Item & Description	Quantity	Unit Price	Total
Bodyworn w/ Rocket IoT Communications and In-Car Video Bundle BodyWorn Camera and Mount, Holster Sensor, CAD Activation, Media Controller; Rocket IoT In- Car Video System Hardware Bundle, Ruggedized Tablet Display, OBD 2, AVaiL Web SaaS, Warranty, and 24/7 Technical Support.	5	\$17,644.00	\$88,220.00 for 5 years
CAD Integration	1	\$16,500.00	\$16,500.00
Subtotals			
One-time subtotal			\$104,720.00
Other Fees			
Marquee Customer Discount			-\$27,320.00

Total ¹⁶ \$77,400.00

Purchase Terms

Not to exceed: After initial contract term, the renewal will not exceed greater than 10% of current discounted price.

Signature

Signature

Date

Printed name

Questions? Contact me



Brian Churchill
Business Manager
bchurchill@utility.com
+1 (470) 391-6452

Utility, Inc.
250 E. Ponce de Leon Ave, Suite 700
Decatur, GA 30030
US

December 8th, 2021

Town Administrator, Janell Sciacca
901 Main Street, PO Box 267, Fairplay, CO 80440

Dear Administrator Sciacca,

Utility Associates, Inc. (UA, herein) is honored that the Town of Fairplay and the Fairplay Police Department have selected our Company to provide its Officers with the BodyWorn™, In Car Video and Rocket IoT™ solution. We take great pride in our Law Enforcement Partnerships and look forward to adding your police department to the growing family of Departments and Agencies who have deployed BodyWorn™, In Car Video and Rocket IoT™ – the industry's smartest technology for first responders.

Please allow this letter to serve notice that UA agrees to the following provisions as part of the service agreement that the Town of Fairplay, Colorado intends to enter into with our Company:

1. Services Pricing Proposal:

- a. Rocket IoT™ In Car Video and Vehicle and Communications Systems to support a total of 5 vehicles
- b. BodyWorn™ Cameras to support a total of 5 Officers
- c. Period of agreement = Five (5) years from date of authorized signature
- d. Total system price: covering the scope and quantities specified in this offer for service - Includes all hardware, software licenses, BodyWorn™ generated data storage/retrieval, warranty, support, for a period of Five (5) Years for: \$77,400.00
- e. Attachment A - (Quote #20211207-234003684) outlines the details of the services pricing proposal, with associated quantities

2. Bill of Materials Included with the Offer: As part of the annual subscription price for Five (5) years, each system will include the following:

Rocket IoT In Car Vehicle and Video Communications/Camera triggers - Includes AVaiLWeb™ SaaS, Training and Configuration, Warranty and Technical Support with Unlimited BodyWorn™ Generated Video Storage and Download.

Every Officer (Qty. 5) will be equipped with the following:

- a. One (1) BodyWorn™ Camera and Mount
- b. One (1) Holster Activation Sensor
- c. One (1) Bluetooth BodyWorn™ Wrist/Belt Trigger
- d. \$200 Uniform Allotment, Towards Any Combination of New BodyWorn™ Ready Uniforms, per BodyWorn™ Camera Purchased - (Allotment May Not be Applied to Any Other Products or Services and is surrendered if not used within 90 Days from Date of Purchase)
- e. Five (5) Retrofits of Existing, Standard Uniform Garments, to BodyWorn™ Ready Status, per BodyWorn™ Camera Purchased – See Section 1.1.6 of the Customer Service Agreement, for Definition of Standard Uniform
- f. AvailWeb™ Video Management Software and Mapping Interface License

- g. Unlimited BodyWorn™ Generated Download & Storage – Based on Department's Retention Policy
- h. Smart Redaction Software License
- i. Installation and Training – Onsite and Online Training Included
- j. CAD Integration and Activation
- k. Full Warranty
- l. 24/7 Technical Support for the Life of the Contract

Every Vehicle (Qty. 5) will be equipped with the following:

- a. Rocket IoT™ Vehicle Control Unit, DVR, and Communications Hub
- b. In Car Video Solution
- c. Rocket IoT Vehicle Triggers
- d. One Forward Facing and One Rear Facing HD Camera
- e. Ruggedized Tablet Display
- f. Installation, Validation, and Configuration
- g. CAD Integration and Activation
- h. OBDII Vehicle Diagnostics Cable
- i. Full Warranty
- j. 24/7 Technical Support for the Life of the Contract

3. Additional Units – Post Agreement Execution: Additional units, outside the scope of this offer, are subject to price increases, and will be quoted separately as requested of UA personnel.
 - a. Additional services quoted subsequent to this offer for service are quoted in 5-year increments.
 - b. Services added, will extend the effective life of the original agreement to the end term of the most recent services contracted, regardless of quantities secured.

4. Installation Services: Outside the scope of this offer, any additional units will be subject to the following.
 - a. Daily rate charges of \$1,750/day are applied at a minimum of two (2) days for installs of less than ten (10) vehicles, per scheduled visit.
 - b. A charge for deinstallation of competitor equipment is assessed at a minimum of \$100 per vehicle, with disposal at the site of installation. UA recommends disposal and recycling of electronics in accordance with local regulations.
 - c. On average, one (1) UA Field Engineer is capable of 2-3 Installations of basic RocketIoT In-car systems, per working day (dependent on-site conditions and vehicle type(s)). Working days are consecutive in order to avoid any additional fees.

5. Services Initiation Date:
 - a. Contract services begin upon receipt of hardware.
 - b. This agreement requires that the customer be capable of receiving hardware within 4 to 6 weeks of contract execution.
 - c. The Customer agrees to maintain all hardware in a secure storage area until time of installation is coordinated by UA project management

6. Customer Service Agreement (CSA):

- a. The Customer Service Agreement asserts 99% uptime with 24/7 technical support. This includes after hours call back on any issues requiring immediate attention. On/Off hour call backs will be provided on all issues directed to the 24/7 support team; this includes issues related to the upload and access to video, and any troubleshooting needed while an Officer(s) is/are on duty.
- b. Details of the CSA are provided in Attachment (B).

7. CAD Integration Services:

- a. Services quoted for integration cover a standard scope of work for setting up a virtual SQL server for the purposes of imported CAD data replication into AVaiLWEB™. Exceptions to this process must be worked out between the Customer and their current CAD Provider in a timely manner as to not impede deployment of UA service deliverables. UA will not assume any costs associated with exceptions to our standard work.
- b. While rare, certain CAD vendors may resist sharing of information for the purposes of integrating and activating BodyWorn™ cameras based on calls for service. Any additional fees assessed by the CAD vendor, will be forwarded to the Customer for prompt payment. These fees are ultimately between the Customer and CAD vendor to reconcile.

8. Terms and Options for Payment of Services: In consideration of the potential partnership between UA and the Town of Fairplay we would like to extend the following special payment terms for a five-year service term.

Installment Payment Option:

Payment 1: Paid within 45 days from execution of offer letter or earlier, pending Colorado grant approval.

	\$30,960
Payment 2: Paid Upon Year 1 Anniversary of Signing	\$11,610
Payment 3: Paid Upon Year 2 Anniversary of Signing	\$11,610
Payment 4: Paid Upon Year 3 Anniversary of Signing	\$11,610
Payment 5: Paid Upon Year 4 Anniversary of Signing	\$11,610

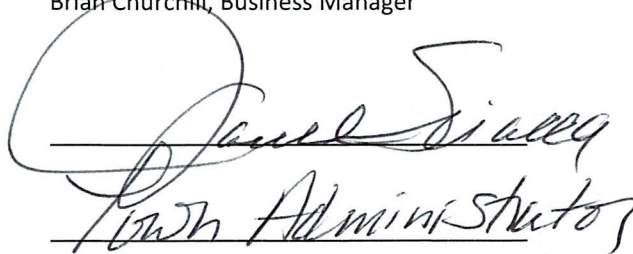
Total: \$77,400.00

We are privileged to work with your Town on this project. Should you have any questions, at any time, please feel free to call or email me at: 470.391.6452 Email: bchurchill@utility.com

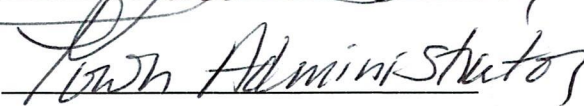
Respectfully,

Brian Churchill, Business Manager

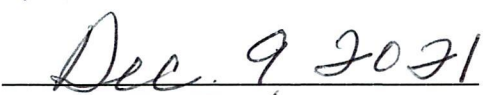
Offer Acceptance by Authorized Official:



Title:



Date:



Customer Service Agreement

INTRODUCTION

This service agreement describes the levels of service the Fairplay CO Police Department (“Client” or “Customer”) will receive from Utility Associates, Inc. (“UA” or “Supplier”).

Purpose

The Client depends on IT equipment, software and services (the IT system) that are provided, maintained and supported by the Supplier. Some of these items are of critical importance to the Client’s business.

This service agreement sets out what levels of availability and support the Client is guaranteed to receive for specific parts of the IT system.

This Service Agreement forms an important part of the contract between the Client and the Supplier. It aims to enable the two parties to work together effectively.

SCOPE

Parties

This agreement is between:

The Client:	The Supplier:
Fairplay Colorado Police Department	Utility Associates Inc.
901 Main St. PO Box 267 Fairplay, CO 80440	250 E. Ponce De Leon Avenue Suite 700 Decatur, GA 30030
Key Contact: Bo Schlunsen Chief Bschlunsen@fairplayco.us 719-836-2840	Key Contact: Amanda A. Havice 800-597-4707 contracts@utility.com

Dates and Reviews

This agreement begins on the Effective Date of the agreement, which is the date of signature by the Client of the accompanying Offer Letter Document and will run for the term of the agreement plus any extensions of such agreement.

It may be revised at any point by mutual written agreement, including if there are any changes to the Client’s system.

Equipment, Software and Services Covered

This agreement covers only the equipment, software and services in the table below. This list may be updated at any time, with agreement from both the Client and Supplier.

Item Type	Number of Items	Item Priority
BodyWorn Camera	Qty 5 Supplied by Utility	1
Bluetooth Controller	Qty 5 Supplied by Utility	2

BodyWorn Ready Uniforms	\$200 Allotment Towards any Combination of New BodyWorn Ready Uniforms, per Body Camera Purchased .	3
Existing Uniform Retrofits	Qty. of 5, Standard Uniform Retrofits (see table 1.2.1 for definitions) per Body Camera Purchased. Additional uniforms after initial deployment will be governed by Customer Service Agreement, Section 1.1.6.	3
RocketIoT In-Car Video	Qty 5 Supplied by Utility	1
Ruggedized Tablets	Qty 5 Supplied by Utility	2
CAD Integration	Qty 1 Supplied by Utility	2
CAD Activation	Qty 5 Supplied by Utility	2
AVaiL Web	Qty Unlimited Licenses Supplied by Utility	1
OBDII Vehicle Diagnostics Cable	Qty 5 Supplied by Utility	3
*Includes all services, installation, training, and configuration of the above listed equipment and cost proposal.		

Exclusions

This agreement is written in a spirit of partnership. The Supplier will always do everything possible to rectify every issue in a timely manner.

However, there are a few exclusions. This agreement does not apply to:

- Any equipment, software, services or other parts of the IT system not listed above
- Software, equipment or services not purchased via and managed by the Supplier

Additionally, this agreement does not apply when:

- The problem has been caused by using equipment, software or services in a way that is **not recommended (defined as intentional neglect, misuse, or destruction of the equipment)**
- The Client has made **unauthorized changes** to the configuration or set up of affected equipment, software or services. Unauthorized changes are defined as changes made by any party other than the Supplier to the software, hardware, or firmware that alter the system's ability to record, upload, or view data.
- The Client has prevented the Supplier from **performing required maintenance and update** tasks.
- The issue has been caused by **unsupported** equipment, software or other services of the Client.

This agreement does not apply in circumstances that could reasonably be said to be beyond the Supplier's control. For instance: floods, war, acts of god and so on.

Regardless of the circumstances, the Supplier aims to be helpful and accommodating at all times and will do its absolute best to assist the Client wherever possible.

RESPONSIBILITIES

Supplier Responsibilities

The Supplier will provide and maintain the IT system used by the Client. This Agreement between the Supplier and the Client includes full details of these responsibilities.

Additionally, the Supplier will do the following:

- SaaS will be maintained at 99% uptime/availability or greater 24/7/365
- Ensure relevant software, services and equipment are available to the Client including an appropriate level of spares
- Respond to support requests within the timescales listed below
- Take steps to escalate and resolve issues in an appropriate, timely manner
- Maintain good communication with the Client at all times

Client Responsibilities

The Client will use the Supplier-provided IT system as intended.

The Client is responsible for maintaining power and internet connectivity at all video offload locations on the network. For offload via a Client approved third party or Supplier provided access point, the Client has the option of either (a) organizing an independent internet connection via its local provider with a minimum upload speed of 50 Mbps, or, (b) connecting the access point to its own network having a minimum internet upload speed of 50 Mbps. Upon execution of this Agreement, as part of the deployment process, a network assessment will be conducted of the Client's upload speed for the transmission of data to the CJIS Compliant Cloud. In most cases, the Client should budget for an increase to their upload speed with their local carrier.

Additionally, the Client will:

- Notify the Supplier of issues or problems in a timely manner
- Provide the Supplier with access to equipment, software and services for the purposes of maintenance, updates and fault prevention
- Maintain good communication with the Supplier at all times

GUARANTEED RESPONSE TIMES

When a Client raises a support issue with the Supplier, the Supplier promises to respond in a timely fashion.

Response Times

UA provides a 99% uptime/availability commitment. All systems have health monitoring that assures that issues are typically addressed 24/7/365 by UA personnel before they become an impact to the performance of the service. For support provided to the customer directly, UA has a tiered response to support that will escalate the level of support depending on the situation. Tier 1 would be on-site support by the department staff after they have been trained by UA, which will alleviate most day-to-day issues that may pop up. Problems beyond Tier 1 scope will be escalated to Tier 2, which is phone-based support, and from there to Tier 3, which is on-site technical support from a UA field engineer. The cost of the response time is included in this Agreement.

While most support calls are handled immediately, Tier 2 issues have guaranteed response times as shown below:

Item Priority	Fatal	Severe	Medium	Minor
1	1 Hour	1 Hour	2 Hours	3 Hours
2	2 Hours	2 Hours	4 Hours	6 Hours
3	4 Hours	4 Hours	8 Hours	16 Hours

Severity Levels

The severity levels shown in the tables above are defined as follows:

- **Fatal:** Complete degradation – **all users and critical functions affected.** Item or service completely unavailable.
- **Severe:** Significant degradation – **large number of users or critical functions affected.**
- **Medium:** Limited degradation – **limited number of users or functions affected.** Business processes can continue.
- **Minor:** Small degradation – **few users or one user affected.** Business processes can continue.

RESOLUTION TIMES

The Supplier will always endeavor to resolve problems as swiftly as possible. It recognizes that the Client's systems are key to daily functions and must be functional in the field.

However, UA is unable to provide guaranteed resolution times. This is because the nature and causes of problems can vary.

In all cases, the Supplier will make its best efforts to resolve problems as quickly as possible. It will also provide frequent progress reports to the Client.

SCOPE OF SERVICES

1.1.1 Access to Software. UA is the developer and owner of, or has rights to, certain enterprise mobile device tracking and messaging software known as "AVaiL™", "AVaiL Web", "Vehicle Diagnostics", and "RFID Tracking" and related content to be provided to Customer; such software, its related content and any related documentation provided by UA, and the means used to provide the software to Customer and the services described herein are collectively referred to as the "Service". Subject to Customer's payment of the applicable fees and Customer's compliance with the terms of this Agreement, Customer, its affiliates and its and their employees ("Licensed Users") shall have the right to access and use the Service solely for Customers and its affiliates' internal business purposes. UA will issue to one Licensed User ("Customer Administrator") an individual login identifier and password ("Administrator Login") for purposes of administering the Service. Using the Administrator's Login, the Customer Administrator shall assign each Licensed User a unique login identifier and password ("User Login") and provide such information to the Licensed Users and UA via the Service. Customer shall not provide a User Login to any individual or entity that is not a Licensed User to use the Service. Customer shall be responsible to ensure, by agreement or otherwise, that each Licensed User will: (a) be responsible for the security and/or use of his or her User Login; (b) not disclose such login identifier or password to any person or entity; (c) not permit any other person or entity to use his or her User Login; (d) use the Service only in accordance with the terms and conditions of this Agreement and on the workstation software from which the Service is accessed. UA shall have the right to deactivate, change and/or delete User Logins of Licensed Users who have violated this Agreement and to deny or revoke access to the Service, in whole or in part, if UA reasonably believes Customer and/or its Licensed Users are in material breach of this Agreement. Customer shall be solely responsible for ensuring that the access to the Service by a Licensed User who ceases to be an employee of Customer or one of its affiliates is terminated. UA shall have no responsibility for managing, monitoring, and/or overseeing Customer's and its Licensed Users' use of the Service. Customer acknowledges that the Service may contain devices to monitor Customer's compliance with the terms and restrictions contained herein and Customer's obligations hereunder.

1.1.2 Operating Environment. Customer is solely responsible for acquiring, installing, operating and maintaining the hardware and software environment necessary to access and use the Service remotely via the Internet.

1.1.3 Changes to Service. UA may upgrade, modify, change or enhance (“Change”) the Service and convert Customer to a new version thereof at any time in its sole discretion so long as such Change does not materially diminish the scope of the Service, in which event Customer shall have the right to terminate this Agreement upon thirty (30) days written notice to UA. During the term of this agreement, if UA upgrades the version of the Service Customer is using under this Agreement, Customer will not be charged an upgrade fee. Should UA offer additional optional software modules in the future that complement the Software, Customer may elect to purchase the optional software modules for an additional fee; however, Customer has no obligation to do so.

1.1.4 Help Desk. UA shall provide 24/7 Customer support in the form of a Help Desk. Customers reporting issues through email will receive confirmation of the issue within a reasonable time and will receive a callback the same business day if practical. The Help Desk is always subject to availability of our technical staff and clause 1.1.5 below.

1.1.5 Uptime Commitment.

a. Availability. The Service will be made available to Customer and its Licensed Users twenty-four hours a day, seven days a week less the period during which the Service are not available due to one or more of the following events (collectively, the “Excusable Downtime”):

- (i) Scheduled network, hardware or service maintenance;
- (ii) The acts or omissions of Customer or Customer's employees, agents, contractors, vendors, or anyone gaining access to the Service by means of a User Login;
- (iii) A failure of the Internet and/or the public switched telephone network;
- (iv) The occurrence of any event that is beyond UA's reasonable control, or
- (v) At Customer's direction, UA restricting Customer's and its Licensed Users access to the Service.

b. Commitment. Customer is responsible for promptly notifying UA in the event of a suspected Service failure. For the purposes of establishing uptime herein, downtime begins upon such notification and ends upon restoration of Service. Subject to Customer satisfying its obligations herein, UA guarantees that the Service will be available to Customer and its Licensed Users at least 99% of the time during each calendar month, excluding Excusable Downtime (“Uptime Commitment”). If UA fails to satisfy the Uptime Commitment during a month, then UA will credit to Customer a pro-rated portion of the Fees in the first month of the next succeeding calendar quarter following the failure. For purposes of this Section, “pro-rated portion of the Fees” means the product obtained by multiplying the applicable Fees during the month of the failure by a fraction, the numerator of which will be the number of hours that the Service did not satisfy the Uptime Commitment, and the denominator of which will be the total number of hours during the month that such failure occurred less Excusable Downtime.

1.1.6 Uniforms. UA's BodyWorn Solution is the only body camera system available to law enforcement that features direct integration of camera hardware into the officer's/deputy's uniform. As part of the multi-year service agreement, UA will furnish the following allotments and services during initial project launch.

a. Retrofits of existing uniforms. A quantity of five (5) standard uniform garments, per BodyWorn camera purchased, will be modified to BodyWorn ready status, for the purposes of product integration with our camera hardware solution. UA will provide The Client with both uniform retrofit vouchers and packing slip templates. Note, both uniform vouchers and accurately completed packing slips are required for all retrofit requests being sent to UA for processing. Failure to provide accurate uniform information may result in delays of processing The Client's request.

b. Retrofits of Standard garment types. Acceptable garment installation types offered at no-additional charge, as part of the initial project launch with a multiyear service agreement, include the following:

- (i) Duty shirts (long or short sleeve)
- (ii) Soft outer carrier vest
- (ii) Standard soft-shell jacket

c. Retrofits of Non-standard garment types. Excluded from the initial project launch retrofitting service, that may still be modified to BodyWorn ready status at an additional charge, include the following: (please see table 1.2.1, for pricing details)

- (i) Polo shirts
- (ii) Commando style sweaters
- (ii) Tactical vest or outer plate carriers
- (iv) Leather jackets

d. Certification of local uniform resellers. Following the recommendation of the Client, a local uniform reseller may be eligible to participate in UA's uniform certification program. This program is designed to maximize the speed in which new recruits and/or existing Officers/Deputies receive BodyWorn standard uniform garment retrofits, post project deployment. Additionally, this program is designed to foster the support of local small businesses in your respective area.

- (i) Resellers may participate in the certification program, for the purposes of retrofitting standard duty shirts and soft outer carrier vests only. All other non-standard garment retrofits should be forwarded to UA, at the expense of The Client.
- (ii) As part of the certification offered, UA will supply one (1) grommet installation machine and training of up to 5 reseller personnel, per session. Sessions run for a dedicated 16-hour period, over the course of two days. The reseller will be responsible for furnishing uniforms for the purposes of training and certification.
- (iii) Certification fees. Certification of each local uniform reseller will be charged to The Client, at \$2,500 per session.

e. As part of the offering with a multiyear service agreement, UA will provide a \$200 allotment towards any combination of new BodyWorn ready, standard uniforms, per body camera purchased.

1.2.1 Uniform Retrofit Pricing Schedule. Prices effective May 2021.

a. BodyWorn - **standard** garment retrofit service table

Example Model	Description	Price (ea).
Blauer 8670, 8675, 8446	Duty Shirt, BodyWorn Ready	\$13
Blauer 8780, 8370, 8375, 8470 (XP Series)	Carrier Vest Mount, BodyWorn Ready	\$23
Blauer 343, 343R	Traffic Safety Vest, BodyWorn Ready	\$23
Blauer 8780, 8370, 8375, 8470	Carrier Vest Zipper Mount, BodyWorn Ready	\$23
Spiewak	Carrier Vest Mount, BodyWorn Ready	\$33
Duty Jacket (Charge per Layer)	All Jackets (Except Leather – Estimate Only)	\$23
All Standard Uniform Types	Grommet Swap Out	\$10

b. BodyWorn **non-standard** garment retrofit service table. Due to the complicated nature of retrofitting non-standard garments, all prices provided below are considered estimates. Final pricing will be assessed at the time of services rendered. For additional questions, comments or concerns please email UA at: uniforms@utility.com.

Description	Price (ea).
Carrier Vest – Horizontal Mounting (Ex. Blauer 8340, 8375)	\$33
Tactical Vest or Load Bearing Vest (LBV) – All Styles	\$53
Polo Shirt	\$43
Polo Carrier – Horizontal Zipper	\$43
Leather Jacket / Coat.	Estimate Only
Patches	
Single	\$5
Pair	\$6
Name Tape - Includes Embroidery and Velcro	\$10

Motor unit jackets must be quoted via design consult, please contact uniforms@utility.com to schedule.

USE OF THE SERVICE

2.1 **Scope of Use.** Subject to the terms and conditions of this Agreement, including, without limitation, Section 2.2 and 2.3 hereof and Customer's payment of all applicable Fees, UA hereby grants to Customer a limited, a non-exclusive, non-assignable, non-transferable license (the "License"), without the right to sublicense, to access and use the Service, during the Term, over the Internet for Customer's and its affiliates' internal business purposes, on a computer or a computer network operated by Customer, only by Licensed Users and only using the User Logins provided to UA for such Licensed Users for such use.

2.2 **End User License Agreements.** The Licensed software may incorporate software under license from a third party. If the third party requires Customer's notification of such use through an End User License

Agreement (EULA), UA will provide such notification to the Customer. In order to use the Service, the Customer agrees to be bound by all EULA(s) provided at the time of delivery whether by hardcopy or displayed upon Installation or use of the Service. Customer's use of the Service subsequent to such notice(s) shall constitute Customer's acceptance of the EULA(s).

2.3 Restrictions. Customer and its Licensed Users shall not: (a) copy the Service or any portion thereof other than as required to use the Service remotely as intended by this Agreement; (b) translate, decompile or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Service; (c) modify, adapt, translate or create a derivative work from the Service; (d) use the Service to track more than the number of tracked asset units for which Fees have been paid pursuant Article 3 below; (e) sell, lease, loan, license, assign, sublicense, rent, transfer, publish, disclose, divulge, display, make available to third parties on a time-sharing or service bureau basis or otherwise make available for the benefit of third parties all or any part of the Service, including, without limitation, by transmitting or providing the Service, or any portion thereof, over the Internet, or otherwise, to any third party; (f) interfere or attempt to interfere with the operation of the Service in any way; (g) remove, obscure or alter any label, logo, mark, copyright notice, trademark or other proprietary rights notices affixed to or contained within the Service; (h) create any frames or other references at any other web sites pertaining to or using any of the information provided through the Service or links to the Service; or (i) engage in any action that constitutes a material breach of the terms and conditions of this Agreement. All rights not expressly granted hereunder are reserved to UA.

FEES AND PAYMENT TERMS

3.1 Fees. As a condition to the License granted pursuant to Section 2.1 above, Customer shall pay annual Service usage fees ("Fees"). Customer shall, in addition to the Fees required hereunder, pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transaction(s) contemplated hereby, excluding, however, income taxes on income which may be levied against UA ("Taxes"). Customer shall reimburse UA for the amount of any such Taxes. If Customer fails to pay any undisputed Fees within thirty (30) calendar days of the date they are due, UA may bill Customer a 1.5% fee per month and the Service shall be suspended until all outstanding Fees have been paid. All Fees shall be non-refundable except as otherwise set forth herein.

3.2 Time-and-Materials Service. If Customer requests and UA agrees to provide services that are outside the scope of the Service, such services shall be provided at UA's then-current hourly service rates or as established within a separate agreement addressing these specific requests.

REPRESENTATIONS AND WARRANTIES

4.1 Expressed Warranty. Products manufactured by UA are warranted to be free from defects in material and workmanship under normal use and service. This warranty is applicable to any of UA's products that Customer returns to UA during the period of the initial term of the agreement. All equipment issued, including BodyWorn™ devices and peripherals, and Rocket IoT™ in-vehicle systems and peripherals, are warranted for the duration of the initial agreement and will be repaired or replaced at UA's cost with an appropriate Request to Merchant (RMA) authorization. UA's obligations, with respect to such applicable warranty returns, are limited to repair, replacement, or refund of the purchase price actually paid for the product, at UA's sole option. UA shall bear round-trip shipment costs of defective Items found to be covered by this warranty. Defective Products or parts thereof may be replaced with either new, factory refurbished, or remanufactured parts. Defective parts, which have been replaced, shall become the UA's property. This warranty does not extend to any product sold by UA which has been subjected to malicious intent, neglect, accident, improper installation by a non-authorized 3rd party, or a use for purposes not included or not in accordance with operational maintenance procedures and instructions furnished by UA, or which has been repaired or altered by UA or persons other than UA or which has been damaged by secondary causes, including but not limited to, improper voltages, adverse environment conditions, improper handling, or products which have had their serial number or any part thereof altered, defaced, or removed. UA liability does not cover normal wear and tear or deterioration. Uniforms or modified uniforms provided with the service have a 1-year warranty and are limited to defects in material workmanship that

render prevent the user from capturing video and/or using the Service. The Expressed Warranty does not include changes to the color or appearance of the uniform that result from normal wear and tear.

4.2 **UA and Customer Responsibilities.** Each party (the "Representing Party") represents and warrants to the other that: (a) it has the authority to enter this Agreement and to perform its obligations under this Agreement; (b) the execution and performance of this Agreement does not and will not violate any agreement to which the Representing Party is a party or by which it is otherwise bound; and (c) when executed and delivered, this Agreement will constitute a legal, valid and binding obligation of the Representing Party, enforceable in accordance with its terms. In addition to the foregoing: UA warrants that the software provided as part of the Service will materially conform to the applicable then-current documentation relating to the Service when used in an operating environment that complies with the then-current documentation relating to the Service. If UA alters the documentation in a way that materially diminishes the scope of the Services, Customer shall have the right to terminate this Agreement upon thirty (30) days prior written notice to UA. In the event that the software which is part of the Service fails to perform in accordance with this warranty, Customer shall promptly inform UA of such fact, and, as Customer's sole and exclusive remedy, UA shall either: (i) repair or replace the Service to correct any defects in the software without any additional charge to Customer, or (ii) terminate this Agreement and provide Customer, as Customer's sole and exclusive remedy, with a pro rata refund (for the unexpired portion of the applicable Term) of the Fees paid to UA hereunder. Customer represents and warrants to UA that Customer and its Licensed Users (i) will use the Service only for lawful purposes; (ii) will not interfere with or disrupt the operation of the Service or the servers or networks involved with the operation of the Service; (iii) attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through any other means; or (iv) interfere with another user's use and enjoyment of the Service.

4.3 **Export Restrictions.** Customer represents and warrants that it and all Licensed Users will comply with all applicable laws, rules and regulations in the jurisdiction from which they access the Service, including those laws, rules and regulations which apply to the access, import, use and export of controlled technology or other goods. Customer also agrees that it and all Licensed Users will comply with the applicable laws, rules and regulations of the jurisdictions from which UA operates the Service (currently, the United States of America). In particular, Customer represents, warrants and covenants that it shall not, without obtaining prior written authorization from UA and, if required, of the Bureau of Export Administration of the United States Department of Commerce or other relevant agency of the United States Government, access, use, export or re-export, directly or indirectly, the Service, or any portion thereof or any Confidential Information of UA (including without limitation information regarding the use, access, deployment, or functionality of the Service) from the United States to (a) any country destination to which access, use, export or re-export is restricted by the Export Administration Regulations of the United States Department of Commerce; (b) any country subject to sanctions administered by the Office of Foreign Assets Control, United States Department of the Treasury; or (c) such other countries to which access, use, export or re-export is restricted by any other United States government agency. Customer further agrees that it is solely responsible for compliance with any import laws and regulations of the country of destination of permitted access, use, export or re-export, and any other import requirement related to a permitted access, use, export or re-export.

4.4 **Warranty Disclaimer.** CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS PROVIDED HEREIN, THE SERVICE IS PROVIDED HEREUNDER WITH NO WARRANTY WHATSOEVER. CUSTOMER ACKNOWLEDGES THAT ITS USE OF THE SERVICE IS AT ITS OWN RISK. EXCEPT AS EXPRESSLY PROVIDED HEREIN, (a) THE SERVICE IS PROVIDED SOLELY ON AN "AS-IS" BASIS, AND (b) UA MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE. UA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NONINFRINGEMENT AND ALL DUTIES AND OBLIGATIONS IMPLIED IN LAW. UA DOES NOT WARRANT THAT THE SERVICE SHALL BE OPERABLE, SHALL PROPERLY STORE DATA, SHALL OPERATE UNINTERRUPTED OR ERROR FREE, SHALL BE SECURE, SHALL KEEP DATA CONFIDENTIAL, SHALL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR SHALL MEET CUSTOMER'S NEEDS.

CONFIDENTIAL INFORMATION

5.1 Confidential Information. As used herein, the term "Confidential Information means all technical, business and other information relating to the Service, which (i) is possessed or hereafter acquired by UA and disclosed to Customer or Licensed Users, (ii) derives economic value from not being generally known to persons other than UA and its customers, and (iii) is the subject of efforts by UA that are reasonable under the circumstances to maintain its secrecy or confidentiality. Confidential Information shall include, but shall not be limited to, oral or written (including, without limitation, storage in electronic or machine readable media) information with respect to UA's trade secrets, know-how, proprietary processes, operations, employees, contractors, prospects, business plans, product or service concepts, business methods, hardware, software, codes, designs, drawings, products, business models and marketing strategies, in each case relating to the Service. Confidential Information shall not include any information which Customer can demonstrate (a) has become generally available to and known by the public (other than as a result of a disclosure directly or indirectly by Customer, any of its affiliates or any of its or their respective employees, contractors or agents), (b) has been made available to Customer on a non-confidential basis from a source other than UA, provided that such source is not and was not bound by a confidentiality agreement with UA or any other legal obligation of non-disclosure, or (c) has been independently acquired or developed by Customer without violating any of its obligations under this Agreement.

5.2 Non-Disclosure of Confidential Information. Customer shall hold confidential all Confidential Information (as defined in Section 5.1) of UA and shall not disclose or use (except as expressly provided in this Agreement) such Confidential Information without the express written consent of UA. Confidential Information of UA shall be protected by the Customer with the same degree of care as Customer uses for protection of its own confidential information, but no less than reasonable care. Customer may disclose Confidential Information only to those of its employees who have a need to know the Confidential Information for purposes of performing or exercising rights granted under this Agreement and only to the extent necessary to do so. At any time upon the request of UA, the Customer shall promptly, at the option of UA, either return or destroy all (or, if UA so requests, any part) of the Confidential Information previously disclosed and all copies thereof, and the Customer shall certify in writing as to its compliance with the foregoing. Customer agrees to secure and protect the Confidential Information in a manner consistent with the maintenance of UA's rights therein and to take appropriate action by instruction or agreement with its Licensed Users to satisfy its obligations hereunder. Customer shall use its reasonable commercial efforts to assist UA in identifying and preventing any unauthorized access, use, copying or disclosure of the Confidential Information, or any component thereof. Without limitation of the foregoing, Customer shall advise UA immediately in the event Customer learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of UA. In the event Customer is required to disclose any Confidential Information by law or court order, it may do so, provided that UA is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that the Customer apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. In such event, Customer shall not be liable for such disclosure unless such disclosure was caused by, or resulted from, in whole or in part, a previous disclosure by Customer, any of its affiliates or any of its or their respective employees, contractors or agents, not permitted by this Agreement. UA Confidential Information shall not include information which can be demonstrated by Customer: (i) to have become part of the public domain except by an act or omission or breach of this Agreement on the part of Customer, its employees, or agents; (ii) to have been supplied to Customer after the time of disclosure without restriction by a third party who is under no obligation to UA to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that UA is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that Customer apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. Notwithstanding the foregoing, UA may publish the fact of the existence of this Agreement and/or the business relationship created hereby, and may include reference to it in its marketing collateral.

5.3 Non-Disclosure of Customer Confidential Information. Notwithstanding any provision of this Agreement to the contrary, UA shall hold confidential all information disclosed to UA (a) concerning the business affairs or proprietary and trade secret information of Customer, (b) any information that derives economic value from not being generally known to persons other than Customer and its employees, and (c) any information that is the subject of efforts by Customer that are reasonable under the circumstances

to maintain its secrecy or confidentiality, whether disclosed to UA by Customer in oral, graphic, written, electronic or machine readable form ("Customer Confidential Information") and shall not disclose or use such Customer Confidential Information without the express written consent of Customer. Customer Confidential Information shall be protected by UA with the same degree of care as UA uses for its own confidential information, but no less than reasonable care. UA may disclose Customer Confidential Information only to those of its employees who have a need to know the Customer Confidential Information for purposes of performing or exercising rights granted under this Agreement and only to the extent necessary to do so. At any time upon the request of Customer, UA shall promptly, at the option of Customer, either return or destroy all (or, if Customer so requests, any part) of the Customer Confidential Information previously disclosed and all copies thereof, and UA shall certify in writing as to its compliance with the foregoing. UA agrees to secure and protect the Customer Confidential Information in a manner consistent with the maintenance of Customer's rights therein and to take appropriate action by instruction or agreement with its employees to satisfy its obligations hereunder. UA shall use reasonable commercial efforts to assist Customer in identifying and preventing any unauthorized access, use, copying or disclosure of the Customer Confidential Information, or any component thereof. Without limitation of the foregoing, UA shall advise Customer immediately in the event UA learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of Customer, and UA will, at UA's expense, cooperate with Customer in seeking injunctive or other equitable relief in the name of UA or Customer against any such person. Customer Confidential Information shall not include information which can be demonstrated by UA: (i) to have become part of the public domain except by an act or omission or breach of this Agreement on the part of UA, its employees, or agents; (ii) to have been supplied to UA after the time of disclosure without restriction by a third party who is under no obligation to Customer to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that Customer is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that UA apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information.

5.4 Passwords. Any and all login identifiers and passwords provided hereunder are deemed Confidential Information of UA. Customer and Licensed Users are responsible for maintaining the confidentiality of such login identifiers and passwords. Customer agrees to (a) notify UA of any unauthorized use of such login identifiers or passwords or any other breach of security pertaining to the Service when it became known to the customer, and (b) ensure that Licensed Users exit from their accounts at the end of each session. UA cannot and will not be liable for any loss or damage arising from Customer's or any Licensed User's failure to comply with this Section 5.4.

5.5 Term. With regard to Confidential Information that constitutes trade secrets, the obligations in this Section shall continue for so long as such information constitutes a trade secret under applicable law. With regard to all other Confidential Information, the obligations in this Section shall continue for the term of this Agreement and for a period of five years thereafter.

INDEMNIFICATION AND LIABILITY

6.1 UA shall indemnify, defend and hold the Customer and its officials, agents and employees harmless from and against any and all claims, damages, losses, injuries and expenses (including reasonable attorneys' fees), relating to or arising out of: (i) any act or omission of UA, its officers, employees, subcontractors, or agents in connection with the performance of the Services; (ii) any breach of a covenant, representation or warranty made by UA under this Contract; and (iii) use by UA of any intellectual property in connection with the Services (whether such intellectual property is owned by UA or a third party) or the incorporation by UA of intellectual property into the Services.

6.2 EXCEPT FOR BREACHES OF SECTIONS 2 OR 5, IN NO EVENT WILL: (I) EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH

DAMAGES; AND (II) EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL ANNUAL AMOUNT PAID BY CUSTOMER TO UA UNDER THIS AGREEMENT. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION. THIS SECTION WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS DEEMED TO HAVE FAILED IN ITS ESSENTIAL PURPOSE.

PROPRIETARY RIGHTS

7.1 Proprietary Rights. No right (except for the License right granted in Article 2), title or interest in any intellectual property or other proprietary rights are granted or transferred to Customer hereunder. UA and its third-party licensors and service providers retain all right, title and interest, including, without limitation, all patent, copyright, trade secret and all other intellectual property and proprietary rights, inherent in and appurtenant to the Service and all derivative works connected therewith.

TERM AND TERMINATION

8.1 Term; Termination. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue for an initial term of five (5) years thereafter, unless terminated earlier or renewed as set forth herein, and shall automatically renew for additional five (5) years (the "Renewal Term") unless either party provides written notice of termination ninety (90) days prior to the expiration of the initial Term or then current Renewal Term. Either party may immediately terminate this Agreement in the event that:

(a) the other party breaches any material obligation, warranty, representation or covenant under this Agreement and does not remedy such failure within thirty (30) days after its receipt of written notice of such breach or,

(b) the other party becomes insolvent or is unable to pay its debts as due, enters into or files (or has filed or commenced against it) a petition, arrangement, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or similar laws of any other jurisdiction or transfers all of its assets to another person or entity.

If timely payment of Fees is not received by its due date, UA reserves the right to either suspend or terminate Customer's or Licensed User's access to the Service. Upon termination or expiration of this Agreement for any reason, the License and the Service shall terminate, Customer will be obligated to pay any and all Fees due hereunder up through the annual anniversary of the Effective Date of this Agreement or expiration and UA shall have no further obligations to Customer. Sections 2.2, 2.3, and 4.3 and Articles 5, 6, 7, 8, and 9 hereof shall survive the expiration or termination of this Agreement for any reason.

MISCELLANEOUS

9.1 Notices. Any written notice required or permitted to be delivered pursuant to this Agreement will be in writing and will be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via telecopier/facsimile, with a confirmation copy sent via overnight mail; (d) one (1) business day after deposit with a national overnight courier;

9.2 Governing Law and Venue. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Georgia. Any suit or proceeding relating to this Agreement shall be brought in the courts, state and federal, located in Dekalb County, Georgia.

9.3 UCITA Disclaimer. THE PARTIES AGREE THAT THE UNIFORM COMPUTER TRANSACTIONS ACT OR ANY VERSION THEREOF, ADOPTED BY ANY STATE, IN ANY FORM ("UCITA"), SHALL NOT APPLY TO THIS AGREEMENT. TO THE EXTENT THAT UCITA IS APPLICABLE, THE PARTIES AGREE TO OPT OUT OF THE APPLICABILITY OF UCITA PURSUANT TO THE OPT-OUT PROVISION(S) CONTAINED THEREIN.

9.4 Assignment. Customer will not assign, sublicense or otherwise transfer this Agreement, in whole or in part, nor delegate or subcontract any of its rights or obligations hereunder, without UA's prior written consent, except in the event of an assignment to an affiliate

9.5 Force Majeure. Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism, or power, communications, satellite or network failures; provided, however, this Section 9.5 shall not apply to Customer's obligation to pay any of the Fees in accordance with Article 3 hereof.

9.6 Modifications. All amendments or modifications of this Agreement shall be in writing signed by an authorized representative of each party hereto. The parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any amendments to this Agreement that are not executed by an authorized representative of UA and Customer; (b) any oral modifications to this Agreement; and (c) any other amendments based on course of dealing, waiver, reliance, estoppel or similar legal theory. The parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section.

9.7 Waiver. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement will not be deemed to be a waiver or modification by such party of any of its rights under this Agreement.

9.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such holding shall not affect the validity or enforceability of the other provisions of this Agreement.

9.9 Headings. The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

9.10 Entire Agreement. This Agreement (including the Schedules and any addenda hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

IN WITNESS WHEREOF, UA and Customer have executed this Agreement as of the date set forth below. All signed copies of this Agreement shall be deemed originals.

Signed on behalf of The Client:

Signed: _____

Name: Frank Just

Title: Mayor

Date: January 3, 2022



Signed on behalf of The Supplier:

Signed: _____

Name: _____

Title: _____

Date: _____



MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator/Clerk

RE: New Business Items B & C – ORC Professional Services Agreements

DATE: January 3, 2022

Background:

Previous Town Administration entered into contracts with Warm Springs Consulting Services, LLC for Operator in Responsible Charge (ORC) services for both the Town's Water Treatment and Wastewater Treatment facilities. Those contracts have expired and both Marty Deline and Keith Chisholm of Warm Springs Consulting have verbally indicated they desire to continue providing these all-important services to the Town for the public's health, safety and welfare.

The qualifications of an ORC are:

- Must be designated as the operator in responsible charge (ORC) by owner of facility or system.
- Must hold a current certificate in the same category, and at the same or higher level, as the system or facility classification.

The Duties are:

- Responsible for operation and maintenance of the facility.
- Must know and understand requirements of applicable permits, laws and regulations.
- May supervise other operators working in the facility.
- Responsible for developing and maintaining a written delegation plan if any tasks or activities are delegated to others.

Both Deline and Chisholm have Class A Water Operator and Class 4 Wastewater Collection licenses with Water Professional Certifications and between them over 80 years of operational experience and knowledge. The Town is very fortunate to have these gentlemen living and working in our community and therefore Staff highly recommends renewal of both agreements in order to continue the seamless operation of both facilities.

Recommendation:

Staff recommends approval of Resolutions No. 3 & 4, Series 2022, as presented by motion, second and a roll call vote.

Attachments:

- Resolutions No. 3 & 4, Series 2022
- WTP and WWTP Professional Service Agreements

**TOWN OF FAIRPLAY, COLORADO
RESOLUTION NO. 3
(Series of 2022)**

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICE AGREEMENT BETWEEN THE TOWN OF FAIRPLAY AND WARM SPRINGS CONSULTING, LLC FOR OPERATOR IN RESPONSIBLE CHARGE (ORC) SERVICES FOR THE TOWN OF FAIRPLAY WATER TREATMENT FACILITY.

WHEREAS, Warm Springs Consulting, LLC has submitted a proposal for Operator In Responsible Charge (ORC) services for the Water Treatment Plant for the Town of; and

WHEREAS, Warm Springs Consulting, LLC represents it is qualified to provide such technical services; and

WHEREAS, the Board of Trustees has reviewed the documents and desires to enter into an agreement with Warm Springs Consulting, LLC for services as specified in the proposal.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, THAT:

Section 1. The Board of Trustees hereby approves the Professional Services Agreement attached hereto as “Exhibit A” and authorizes the Mayor and/or Town Administrator to execute same on behalf of the Town.

Section 2. This resolution shall become effective upon adoption.

RESOLVED, APPROVED, and ADOPTED this 3rd day of January, 2022.

TOWN OF FAIRPLAY, COLORADO

Frank Just, Mayor

ATTEST:

Janell Sciacca, Town Clerk

PROFFESIONAL SERVICES AGREEMENT

Project/Services Name: Operator in Responsible Charge for Water Treatment Facility

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) dated as of January 3, 2022 is entered into by and between Warm Springs Consulting, LLC, a limited liability company of the State of Colorado, whose business address is 1277 High Creek Road, Fairplay, CO 80440 (“Contractor”) and the Town of Fairplay, Colorado, a statutory municipality of the State of Colorado (“Town” and, together with the Contractor, “Parties”).

RECITALS AND REPRESENTATIONS

WHEREAS, the Town desires to have performed certain professional services as described in this Agreement; and

WHEREAS, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the Town desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 SERVICES AND CONTRACTOR PERFORMANCE

1.1 Services and Work Product. As directed by and under the supervision of the Town Administrator for the Town of Fairplay, the Contractor shall provide the Town with the services described in **Exhibit A, attached hereto and incorporated herein** (“Services”). For purposes of this Agreement, “Work Product” shall consist of deliverables and/or product to be created, provided or otherwise tendered to the Town as described in the Services.

1.2 Changes to Services. At any time the Town may request a change or changes in the Services. Any changes that are mutually agreed upon between the Town and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Fairplay Board of Trustees (“Town Board”).

1.3 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town other than as a contracting party and independent contractor. The Town shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for

the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

1.4 Standard of Performance. In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to the Town that the Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

1.5 Patent Indemnification. Contractor shall indemnify, defend and hold Town harmless from any and all claims, demands, and causes of action (including reasonable attorneys' fees and costs of suit) for actual or asserted infringement or actual or asserted appropriation or use by Town of trade secrets, proprietary information, know-how, copyright rights, or patented inventions included in any design or specification furnished by Contractor or arising from the use or sale of materials, equipment, methods, processes, designs and information, furnished by Contractor in connection with the Services. Contractor shall include the foregoing indemnification provision as a term of each agreement utilized by it in the performance of its work which shall extend expressly from the vendor or subcontractor to Town.

1.6 Safety. When and to the extent that Contractor or any of its employees, agents or subcontractors are working under the terms of this Agreement, Contractor will comply, and cause all its employees, agents and subcontractors to comply, with applicable safety rules and security requirements.

1.7 Qualified Personnel. Contractor will make available all qualified Contractors, drafters, technical and clerical personnel necessary to fulfill its obligations under this Agreement. Prior to commencement of work, Contractor will provide Town with the names of all Contractor personnel and their then current hourly rates, if applicable, whose services are to be employed in performance of the Services. Removal or re-assignment of personnel by Contractor will only be done with prior written approval of Town.

1.8 Removal of Personnel by Town. Town may, in its discretion, require Contractor to dismiss from performance of the Services any personnel of Contractor or any subcontractor for any reason, effective upon written notice from Town of such dismissal. Town will not be required to pay salary, or any other costs associated with dismissed personnel effective upon Contractor's receipt of notice to dismiss from Town.

1.9 Representations and Warranties. Contractor represents and warrants that the Services will be performed in a manner consistent with other reasonable professionals providing similar services under similar circumstances. Contractor will complete the Services in accordance with the Agreement and applicable United States laws, regulations, ordinances, and codes in existence at the time the Agreement is executed.

1.10 Maintenance of and Access to Records. Contractor will maintain detailed records of all matters relating to the Services during the term of the Agreement and for a period after its cancellation or termination of not less than five (5) years. Town will have the right to copy and audit during regular business hours all records of any kind which in any way relate to the Services, whether created before, during or after the termination of this Agreement. Access to such records will be provided to Town at no cost.

1.11 Colorado Open Records Act. The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. In the event of the filing of a lawsuit to compel such disclosure, the Town shall inform the Contractor and will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.

1.12 Disclosure of Adverse Information. Contractor will promptly disclose to Town any and all information which Contractor may learn, or which may have a material adverse impact on the Services or the Work Product or Town's ability to utilize the Work Product in the manner and for the purpose for which the Work Product is intended.

2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this **Section 2.0 COMPENSATION** and its Sub-Sections.

A. Compensation. For the Services provided by the Contractor pursuant to **Exhibit A**, Contractor shall receive compensation in the amount of Four thousand and five hundred dollars (\$4,500.00) per month. Payment by the Town shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

B. Increases in Compensation. Any increases or modification of compensation or requests for reimbursement of expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.

3.0 CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1 The Contractor shall become fully acquainted with the available information related to the Services. The Contractor is obligated to affirmatively request from the Town such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

3.2 The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

3.3 The Contractor shall provide all the Services in a timely and professional manner.

3.4 The Contractor shall promptly comply with any written Town request from the Town or any of the Town's duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's

performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.

3.5 The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

3.6 The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

4.0 TERM AND TERMINATION

4.1 Term. The provision of services under this Agreement shall commence on 1/3/2022 and will terminate on 12/31/2022. The Contractor understands and agrees that the Town has no obligation to extend this Agreement's term, or contract for the provision of any future services, and makes no warranties or representations otherwise. Notwithstanding the foregoing, the Parties may mutually agree in writing to the extension of this Agreement if such extension is approved by the Town Council and the Contractor and such extension does not alter or amend any of the terms or provisions of this Agreement.

4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Council.

4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:

- A.** Unless otherwise provided in any notice of termination, the Contractor shall provide the Services in connection with this Agreement up to the date this Agreement is effectively terminated; and
- B.** All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the Town and shall become the property of the Town; and
- C.** The Contractor's Compensation will be prorated based on the number of days worked during the month of termination and paid upon the effective date of the termination of this Agreement.

4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this **Sub-Section 4.4**, "reasonable time" shall be not less than five (5) business days. Provided that notice of non-performance is provided in accordance with this

Sub-Section 4.4, nothing in this **Sub-Section 4.4** shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5 Unilateral Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study) or (2) as required by law.

4.6 Reinstatement of Services Following Town's Unilateral Suspension. The Town may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the Town is made within thirty (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the Town that such suspension is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the Town an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the Town, to provide written notice to the Town that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

4.7 Delivery of Notice of Termination. Any notice of termination permitted by this **Section 4.0 TERM AND TERMINATION** and its subsections shall be addressed to the persons identified in Section 9.17 herein and at the addresses provided therein or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

5.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the minimum amounts specified in this **Sub-Section 5.1**. The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

- A. Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance, if any, shall be endorsed to include the Town as a Certificate Holder.
- B. Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) Dollars each occurrence and of Two Million Dollars

(\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an “occurrence” basis as opposed to a “claims made” basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than of One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with respect to each of the Contractor’s owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

D. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this **Section 5.0 INSURANCE** and its subsections, insurance shall conform to all of the following:

A. For Required Insurance and any other insurance carried by Contractor (“**Contractor Insurance**”), all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.

B. For both Required Insurance and Contractor Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor’s failure to obtain and continuously maintain policies of insurance in accordance with this **Section 5.0 INSURANCE**

and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the Town applicable certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this **Section 5.0 INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the "Project Name" as identified on the first page of this Agreement. The Town may request, and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 OWNERSHIP OF DOCUMENTS

6.1 Work Product is Property of Town. Upon complete payment for services rendered, any Work Product, as defined in **Sub-Section 1.1**, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of Town. Town will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of Town.

6.2 Obligations of Contractor's Personnel and Subcontractors. Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A.** assign to Contractor ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and
- B.** obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 6.0 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 6.0 OWNERSHIP OF DOCUMENTS**.

6.3 Assignment of Proprietary Rights. To the extent that any title to any Work Product may not, by operation of law, vest in Town, or such Work Product may not be considered to be

work made for hire, Contractor hereby irrevocably transfers and assigns to Town in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets and other proprietary rights in and ownership of, the Work Product.

6.4 Town Furnished Information. Title to all materials and all documentation furnished by the Town to Contractor will remain in the Town. Contractor will deliver to the Town any all Work Product and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. the Town's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

6.5 The Contractor waives any right to prevent its name from being used in connection with the Services.

7.0 CONFLICT OF INTEREST

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any Town official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. §24-18-109, as amended, or the Town's ethical principles.

8.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- 8.1** Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- 8.2** Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- 8.3** Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or
- 8.4** Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

9.0 MISCELLANEOUS PROVISIONS

9.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for,

services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver by resolution of the Town Council of the Town of Fairplay, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

9.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

9.3 Affirmative Action. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.4 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 9.4 shall not authorize assignment.

9.5 No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

9.6 Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Town, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

9.7 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Park County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating

primarily to the enforcement of this Agreement. The Parties agree the rule providing ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

9.8 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

9.9 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the Town Council. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Town Council. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

9.10 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

9.11 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the Town and the Contractor.

9.12 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

9.13 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

9.14 Employment of or Contracts with Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or

contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.

9.15 Non-Liability of Town for Indirect or Consequential Damages or Lost Profits.

Parties agree that the Town shall not be liable for indirect or consequential damages, including lost profits that result from the Town's declaration that the Contractor is in default of the Agreement, so long as the Town acts in good faith.

9.16 Indemnity. To the fullest extent permitted by law, Contractor shall indemnify and defend the Town, its members, affiliates, officers, directors, partners, employees, and agents (collectively referred to as the "**Town**" for the purposes of this Section 9.16) from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees (collectively referred to "**Losses**"), arising out of the performance of the Services, provided that (a) any such claim, damage, loss or expense is caused by any negligent act or omission of (i) Contractor, (ii) anyone directly or indirectly employed by Contractor or (iii) anyone for whose acts Contractor may be liable; and (b) such indemnification shall not apply to the extent that such Losses are caused by the negligence of the Town or other party indemnified hereunder. If Contractor is providing architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, the extent of Contractor's obligation to indemnify and defend the Town is enforceable only to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers. If the Contractor is a person or entity providing architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify and defend the Town may be determined only after the Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Contractor and Town. The indemnification in this Section 9.16 shall be construed to comply with C.R.S. § 13-50.5-102(8) *et. seq.*

9.17 Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient. Written notice may also be provided by electronic mail which shall be deemed delivered when receipt is acknowledged by reply of the recipient.

If to the Town:**If to the Contractor:**

Janell Sciacca, Town Administrator Town of Fairplay 901 Main Street/PO Box 267 Fairplay, Colorado 80440 jsciacca@fairplayco.us	Martin Deline Warm Spings Consulting, LLC PO Box 1480 Fairplay, CO 80440 Martindeline1950@gmail.com
With Copy to: Nina Williams, Town Attorney 15306 W. 93rd Avenue Arvada, CO 80007 nina@wilsonwilliamsllp.com	

10.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town of Fairplay and the Contractor and bind their respective entities.

***[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE
FOLLOWS]***

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF FAIRPLAY, COLORADO

By: _____
Frank Just, Mayor

Attest: _____
Janell Sciacca, Town Clerk

CONTRACTOR:

By: Martin Deline
Position: _____

EXHIBIT A
SERVICES TO BE PROVIDED BY CONTRACTOR

Contractor is hired to act as the Operator in Responsible Charge (“ORC”) for the Town’s Water Treatment Facility (“WTF”) in accordance with Regulation 100 of the Colorado Department of Public Health and Environment (“CDPHE”) operator certification requirements. Pursuant to the Agreement, Contractor will:

1. Serve as ORC and will operate the facility to meet or exceed all regulatory standards
2. Perform document all testing, sampling and routine maintenance at the WTF
3. Facilitate and document distribution system maintenance and cross connection control program
4. Supervise all scheduled annual maintenance and any work performed by outside contractors at the WTF;
5. Perform required storage tank inspections
6. Be on call for emergencies and coordinate emergency response and repair to the WTF;
7. Act as a liaison in communication with CDPHE, consulting engineers, contractors, and all third parties having dealings associated with the WTF and collection system; and
8. Be available to provide advice or field questions that might arise.

Not Included in Scope of Work:

1. Responsibility for distribution system maintenance including valve exercising, fire hydrant flushing and repair, utility locates and meter reading. The Town of Fairplay would be the responsible party for these tasks. Warm Springs LLC would assist in these activities when time allows and would work with the Town on coordination and documentation of said work.

TOWN OF FAIRPLAY, COLORADO
RESOLUTION NO. 4
(Series of 2022)

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICE AGREEMENT BETWEEN THE TOWN OF FAIRPLAY AND WARM SPRINGS CONSULTING, LLC FOR OPERATOR IN RESPONSIBLE CHARGE (ORC) SERVICES FOR THE TOWN OF FAIRPLAY WASTEWATER TREATMENT FACILITY.

WHEREAS, Warm Springs Consulting, LLC has submitted a proposal for Operator In Responsible Charge (ORC) services for the Wastewater Treatment Plant for the Town; and

WHEREAS, Warm Springs Consulting, LLC represents it is qualified to provide such technical services; and

WHEREAS, the Board of Trustees has reviewed the documents and desires to enter into an agreement with Warm Springs Consulting, LLC for services as specified in the proposal.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, THAT:

Section 1. The Board of Trustees hereby approves the Professional Services Agreement attached hereto as “Exhibit A” and authorizes the Mayor and/or Town Administrator to execute same on behalf of the Town.

Section 2. This resolution shall become effective upon adoption.

RESOLVED, APPROVED, and ADOPTED this 3rd day of January, 2022.

TOWN OF FAIRPLAY, COLORADO

Frank Just, Mayor

ATTEST:

Janell Sciacca, Town Clerk

PROFFESIONAL SERVICES AGREEMENT

Project/Services Name: Operator in Responsible Charge for Wastewater Treatment Facility

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated as of January 3, 2022, is entered into by and between Warm Springs Consulting, LLC, a limited liability company of the State of Colorado, whose business address is 1277 High Creek Road, Fairplay, CO 80440 ("**Contractor**") and the Town of Fairplay, Colorado, a statutory municipality of the State of Colorado ("**Town**") and, together with the Contractor ("**Parties**").

RECITALS AND REPRESENTATIONS

WHEREAS, the Town desires to have performed certain professional services as described in this Agreement; and

WHEREAS, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the Town desires to engage the Contractor to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 SERVICES AND CONTRACTOR PERFORMANCE

1.1 Services and Work Product. As directed by and under the supervision of the Town Administrator for the Town of Fairplay, the Contractor shall provide the Town with the services described in **Exhibit A, attached hereto and incorporated herein** ("**Services**"). For purposes of this Agreement, "**Work Product**" shall consist of deliverables and/or product to be created, provided or otherwise tendered to the Town as described in the Services.

1.2 Changes to Services. At any time the Town may request a change or changes in the Services. Any changes that are mutually agreed upon between the Town and the Contractor shall be made in writing and upon execution by both Parties shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the Fairplay Town Council ("**Town Council**").

1.3 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the Town other than as a contracting party and independent contractor. The Town shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for

the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

1.4 Standard of Performance. In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado. Contractor represents to the Town that the Contractor is, and its employees performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.

1.5 Patent Indemnification. Contractor shall indemnify, defend and hold Town harmless from any and all claims, demands, and causes of action (including reasonable attorneys' fees and costs of suit) for actual or asserted infringement or actual or asserted appropriation or use by Town of trade secrets, proprietary information, know-how, copyright rights, or patented inventions included in any design or specification furnished by Contractor or arising from the use or sale of materials, equipment, methods, processes, designs and information, furnished by Contractor in connection with the Services. Contractor shall include the foregoing indemnification provision as a term of each agreement utilized by it in the performance of its work which shall extend expressly from the vendor or subcontractor to Town.

1.6 Safety. When and to the extent that Contractor or any of its employees, agents or subcontractors are working under the terms of this Agreement, Contractor will comply, and cause all its employees, agents and subcontractors to comply, with applicable safety rules and security requirements.

1.7 Qualified Personnel. Contractor will make available all qualified Contractors, drafters, technical and clerical personnel necessary to fulfill its obligations under this Agreement. Prior to commencement of work, Contractor will provide Town with the names of all Contractor personnel and their then current hourly rates, if applicable, whose services are to be employed in performance of the Services. Removal or re-assignment of personnel by Contractor will only be done with prior written approval of Town.

1.8 Removal of Personnel by Town. Town may, in its discretion, require Contractor to dismiss from performance of the Services any personnel of Contractor or any subcontractor for any reason, effective upon written notice from Town of such dismissal. Town will not be required to pay salary, or any other costs associated with dismissed personnel effective upon Contractor's receipt of notice to dismiss from Town.

1.9 Representations and Warranties. Contractor represents and warrants that the Services will be performed in a manner consistent with other reasonable professionals providing similar services under similar circumstances. Contractor will complete the Services in accordance with the Agreement and applicable United States laws, regulations, ordinances, and codes in existence at the time the Agreement is executed.

1.10 Maintenance of and Access to Records. Contractor will maintain detailed records of all matters relating to the Services during the term of the Agreement and for a period after its cancellation or termination of not less than five (5) years. Town will have the right to copy and audit during regular business hours all records of any kind which in any way relate to the Services, whether created before, during or after the termination of this Agreement. Access to such records will be provided to Town at no cost.

1.11 Colorado Open Records Act. The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. In the event of the filing of a lawsuit to compel such disclosure, the Town shall inform the Contractor and will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.

1.12 Disclosure of Adverse Information. Contractor will promptly disclose to Town any and all information which Contractor may learn, or which may have a material adverse impact on the Services or the Work Product or Town's ability to utilize the Work Product in the manner and for the purpose for which the Work Product is intended.

2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this **Section 2.0 COMPENSATION** and its Sub-Sections.

A. Compensation. For the Services provided by the Contractor pursuant to **Exhibit A**, Contractor shall receive compensation in the amount of five thousand dollars (\$5,000.00) per month. Payment by the Town shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

B. Increases in Compensation. Any increases or modification of compensation or requests for reimbursement of expenses shall be subject to the approval of the Town and shall be made only by written amendment of this Agreement executed by both Parties.

3.0 CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1 The Contractor shall become fully acquainted with the available information related to the Services. The Contractor is obligated to affirmatively request from the Town such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

3.2 The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the Town concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

3.3 The Contractor shall provide all the Services in a timely and professional manner.

3.4 The Contractor shall promptly comply with any written Town request from the Town or any of the Town's duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's

performance under this Agreement for the purpose of the Town performing an audit, examination, or other review of the Services.

3.5 The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

3.6 The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.

4.0 TERM AND TERMINATION

4.1 Term. The provision of services under this Agreement shall commence January 3, 2022 and will terminate on December 31, 2022. The Contractor understands and agrees that the Town has no obligation to extend this Agreement's term, or contract for the provision of any future services, and makes no warranties or representations otherwise. Notwithstanding the foregoing, the Parties may mutually agree in writing to the extension of this Agreement if such extension is approved by the Town Council and the Contractor and such extension does not alter or amend any of the terms or provisions of this Agreement.

4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the Town Council.

4.3 Town Unilateral Termination. This Agreement may be terminated by the Town for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the Town's exercise of the right of unilateral termination as provided by this paragraph:

A. Unless otherwise provided in any notice of termination, the Contractor shall provide the Services in connection with this Agreement up to the date this Agreement is effectively terminated; and

B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the Town and shall become the property of the Town; and

C. The Contractor's Compensation will be prorated based on the number of days worked during the month of termination and paid upon the effective date of the termination of this Agreement.

4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this **Sub-Section 4.4**, "reasonable time" shall be not less than five (5) business days. Provided that notice of non-performance is provided in accordance with this

Sub-Section 4.4, nothing in this **Sub-Section 4.4** shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

4.5 Unilateral Suspension of Services. The Town may suspend the Contractor's performance of the Services at the Town's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study) or (2) as required by law.

4.6 Reinstatement of Services Following Town's Unilateral Suspension. The Town may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the Town is made within thirty (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the Town that such suspension is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the Town an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the Town, to provide written notice to the Town that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to **Sub-Section 4.3**. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.

4.7 Delivery of Notice of Termination. Any notice of termination permitted by this **Section 4.0 TERM AND TERMINATION** and its subsections shall be addressed to the persons identified in Section 9.17 herein and at the addresses provided therein or such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

5.1 Insurance Generally. The Contractor shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the minimum amounts specified in this **Sub-Section 5.1**. The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

- A.** Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance, if any, shall be endorsed to include the Town as a Certificate Holder.
- B.** Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) Dollars each occurrence and of Two Million Dollars

(\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an “occurrence” basis as opposed to a “claims made” basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury of not less than of One Hundred Thousand Dollars (\$100,000.00) each person and each accident and for property damage of not less than Fifty Thousand Dollars (\$50,000.00) each accident with respect to each of the Contractor’s owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

D. Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the Town as a Certificate Holder.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this **Section 5.0 INSURANCE** and its subsections, insurance shall conform to all of the following:

A. For Required Insurance and any other insurance carried by Contractor (“**Contractor Insurance**”), all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.

B. For both Required Insurance and Contractor Insurance, the Contractor shall be solely responsible for any deductible losses.

C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.

D. For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor’s failure to obtain and continuously maintain policies of insurance in accordance with this **Section 5.0 INSURANCE**

and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the Town applicable certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this **Section 5.0 INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the "Project Name" as identified on the first page of this Agreement. The Town may request, and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 OWNERSHIP OF DOCUMENTS

6.1 Work Product is Property of Town. Upon complete payment for services rendered, any Work Product, as defined in **Sub-Section 1.1**, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of Town. Town will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of Town.

6.2 Obligations of Contractor's Personnel and Subcontractors. Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A. assign to Contractor ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and
- B. obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 6.0 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 6.0 OWNERSHIP OF DOCUMENTS**.

6.3 Assignment of Proprietary Rights. To the extent that any title to any Work Product may not, by operation of law, vest in Town, or such Work Product may not be considered to be

work made for hire, Contractor hereby irrevocably transfers and assigns to Town in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets and other proprietary rights in and ownership of, the Work Product.

6.4 Town Furnished Information. Title to all materials and all documentation furnished by the Town to Contractor will remain in the Town. Contractor will deliver to the Town any all Work Product and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. the Town's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

6.5 The Contractor waives any right to prevent its name from being used in connection with the Services.

7.0 CONFLICT OF INTEREST

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any Town official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. §24-18-109, as amended, or the Town's ethical principles.

8.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the Town may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- 8.1** Suspend the Contractor's performance pending necessary corrective action as specified by the Town without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- 8.2** Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- 8.3** Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the Town; and/or
- 8.4** Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the Town, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

9.0 MISCELLANEOUS PROVISIONS

9.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The Town's approval or acceptance of, or payment for,

services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the Town except in writing signed by the Town Council or by a person expressly authorized to sign such waiver by resolution of the Town Council of the Town of Fairplay, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

9.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

9.3 Affirmative Action. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9.4 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 9.4 shall not authorize assignment.

9.5 No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

9.6 Article X, Section 20/TABOR. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Town, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

9.7 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Park County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating

primarily to the enforcement of this Agreement. The Parties agree the rule providing ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

9.8 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

9.9 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the Town Council. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution or motion of the Town Council. No assignment shall release the Applicant from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

9.10 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

9.11 Integration and Amendment. This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the Town and the Contractor.

9.12 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

9.13 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

9.14 Employment of or Contracts with Illegal Aliens. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or

contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement.

9.15 Non-Liability of Town for Indirect or Consequential Damages or Lost Profits. Parties agree that the Town shall not be liable for indirect or consequential damages, including lost profits that result from the Town's declaration that the Contractor is in default of the Agreement, so long as the Town acts in good faith.

9.16 Indemnity. To the fullest extent permitted by law, Contractor shall indemnify and defend the Town, its members, affiliates, officers, directors, partners, employees, and agents (collectively referred to as the "**Town**" for the purposes of this Section 9.16) from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees (collectively referred to "**Losses**"), arising out of the performance of the Services, provided that (a) any such claim, damage, loss or expense is caused by any negligent act or omission of (i) Contractor, (ii) anyone directly or indirectly employed by Contractor or (iii) anyone for whose acts Contractor may be liable; and (b) such indemnification shall not apply to the extent that such Losses are caused by the negligence of the Town or other party indemnified hereunder. If Contractor is providing architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, the extent of Contractor's obligation to indemnify and defend the Town is enforceable only to the extent and for an amount represented by the degree or percentage of negligence or fault attributable to the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers. If the Contractor is a person or entity providing architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify and defend the Town may be determined only after the Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the Contractor and Town. The indemnification in this Section 9.16 shall be construed to comply with C.R.S. § 13-50.5-102(8) *et. seq.*

9.17 Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient. Written notice may also be provided by electronic mail which shall be deemed delivered when receipt is acknowledged by reply of the recipient.

If to the Town:**If to the Contractor:**

Janell Sciacca, Town Administrator Town of Fairplay 901 Main Street/PO Box 267 Fairplay, Colorado 80440 jsciacca@fairplayco.us	Martin Deline Warm Spings Consulting, LLC PO Box 1480 Fairplay, CO 80440 Martindeline1950@gmail.com
With Copy to: Nina Williams, Town Attorney 15306 W. 93rd Avenue Arvada, CO 80007 nina@wilsonwilliamsllp.com	

10.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of Town of Fairplay and the Contractor and bind their respective entities.

***[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE
FOLLOWS]***

THIS AGREEMENT is executed and made effective as provided above.

TOWN OF FAIRPLAY, COLORADO

By: _____
Frank Just, Mayor

Attest: _____
Janell Sciacca, Town Clerk

CONTRACTOR:

By: Martin Deline
Position: _____

EXHIBIT A
SERVICES TO BE PROVIDED BY CONTRACTOR

Contractor is hired to act as the Operator in Responsible Charge (“ORC”) for the Town’s Water Treatment Facility (“WTF”) in accordance with Regulation 100 of the Colorado Department of Public Health and Environment (“CDPHE”) operator certification requirements. Pursuant to the Agreement, Contractor will:

1. Serve as ORC and will operate the facility to meet or exceed all regulatory standards
2. Perform document all testing, sampling and routine maintenance at the WTF
3. Facilitate and document distribution system maintenance and cross connection control program
4. Supervise all scheduled annual maintenance and any work performed by outside contractors at the WTF;
5. Perform required storage tank inspections
6. Be on call for emergencies and coordinate emergency response and repair to the WTF;
7. Act as a liaison in communication with CDPHE, consulting engineers, contractors, and all third parties having dealings associated with the WTF and collection system; and
8. Be available to provide advice or field questions that might arise.

Not Included in Scope of Work:

1. Responsibility for distribution system maintenance including valve exercising, fire hydrant flushing and repair, utility locates and meter reading. The Town of Fairplay would be the responsible party for these tasks. Warm Springs LLC would assist in these activities when time allows and would work with the Town on coordination and documentation of said work.



MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator/Clerk

RE: New Business Item D – Proposed Planning Services Rate Increase

DATE: January 3, 2022

Background:

The Town entered into a perpetual contract with Hunn Planning & Policy, LLC in 2018. Since that time, Principal and Owner Scot Hunn has provided exceptional planning and development related services to Fairplay since that time without any increase in fees. Hunn is now proposing a nominal increase due to recent national inflation rates and cost of living increases and to be more consistent with rates charged to other clients.

Hunn is proposing to increase the Base Rate from \$100.00 to \$125.00 and the Projects (Pass-Through) Rate from \$100.00 to \$150.00. The original agreement approved in 2018 provides that it may be amended by written instrument signed by both the Town and Consultant. Therefore, Hunn provided the attached proposal for consideration.

Again, the Town has received exceptional service from Hunn. Additionally, his overall knowledge of planning, the community and its history are invaluable, and the working relationship has been nothing but professional. Staff was aware of this proposal and budgeted accordingly in the 2022 document and fully supports the nominal rate increases as proposed.

Recommendation:

Staff recommends approval of the amendment to the Professional Services Agreement previously approved with Hunn Planning & Policy, LLC on March 5, 2017 as presented by motion, second and a roll call vote.

Attachments:

2022 Rate Increase / Contract Amendment Proposal

HUNN

PLANNING & POLICY, LLC.

December 14, 2021

Ms. Janell Sciacca, Town Administrator
 Town of Fairplay
 901 Main Street
 Fairplay, CO. 80440

Re: Hunn Planning 2022 Rate Increase / Contract Amendment Proposal

Janell,

Following up on our recent discussions regarding my professional service rates, my original 2018 contract with the Town of Fairplay, and my desire to raise my rates for FY 2022 in response to recent national inflation rates and cost of living (CPI) increases, and to more closely align with the base rate that I charge other municipal clients, I am herewith proposing for yours and the Town Board's consideration and approval the following substantive amendments to the contract (approved via Resolution No. 9, Series 2018) pursuant to Article 8 of that contract:

Current Base Rate:	\$100.00/Hour
Proposed Base Rate (Town):	\$125.00/Hour
Proposed Rate for Projects:	\$150.00/Hour*

- * I propose charging \$150.00/Hr. for projects that can be billed as "pass-through" charges to individual applicants. I already itemize all hours billed to specific land use reviews and other projects so that the Town Treasurer can bill clients individually for my services; this will continue but the rate would increase from \$100.00/Hr. to \$150.00/Hr. for those individual projects. All other Town business – usually categorized on my invoices as "Town Business" or "General Planning Services" would be billed at \$125.00/Hr.

By way of comparison, I normally charge my *non-municipal* clients a minimum of \$150.00/Hr. and up to \$250/Hr. for planning/property entitlement work, expert witness testimony, and similar planning services. That said, I have always given my municipal clients a significant discount in consideration of a retainer agreement wherein I charge a minimum retainer – to guarantee a minimum number of hours service each month - in return for an agreed upon minimum monthly compensation and to keep my rates affordable for Town clients operating on often times limited budgets.

However, some time ago, I had proposed to Tina Darrah to start charging the Town of Fairplay only for hours worked rather than expecting to bill a minimum amount each month. I am happy to continue in this manner – with no retainer agreement – unless you and the Town Board would like to reestablish a retainer agreement and billing arrangement. I will remain available to you and the Town either way and will produce the work that is required with or without a retainer. I looked at past time logs and invoices for the past two years and feel that my hours per month averaged about 6-7 hours, with some months over 10 hours and some well below that threshold.

Therefore, I respectfully suggest that raising my base rate to \$125.00/Hr. for Town related services and \$150.00/Hr. for all other (individual, project based) clients starting in 2022 is a reasonable increase given inflation and CPI increases in the four years since I first executed a contract with the Town.

I will be happy to answer any questions that you or the Board may have in this matter and, as always, I wish to emphasize my ongoing enjoyment serving the Town of Fairplay as the consulting Town Planner. I look forward to continuing my service in the years to come and working with you and the Town Board to address issues and updates with the Town Code and to see that new development proposals meet the Town’s goals, objectives, and regulations.

According to Article 8 of the contract, an amendment to the contract may be approved, in writing, by me and the Board, rather than executing a new, separate contract. Please let my signature below serve as evidence of my written approval of the proposed amendment.

Scot D. Hunn, Principal/Owner
Hunn Planning & Policy, LLC.

Frank Just, Honorable Mayor
Town of Fairplay

_____ Date: _____

_____ Date: _____



MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator/Clerk

RE: New Business Item E – Hahn Professional Services Agreement Extension

DATE: January 3, 2022

Background:

The Town entered into a Professional Services Agreement with Hahn Water Resources, LLC on July 19, 2021 for reconnaissance-level engineering and testing of its water treatment facility (infiltration gallery). Unfortunately, due to circumstances beyond the Town's control, completion of the testing has been delayed and Mr. Hahn is requesting a 2-month extension of the agreement.

There are no other changes to the original agreement and accordingly no impacts anticipated budgetarily. Therefore, Staff fully supports and highly recommends extending the agreement to February 26, 2022 to allow for the completion of the investigation and testing of the Town's water infiltration gallery.

Recommendation:

Staff recommends approval of the Amendment to the Professional Services Agreement extending the original agreement approved by Resolution No. 19, Series 2021, as presented by motion, second and a roll call vote.

Attachments:

- Amendment to Professional Services Agreement

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

This Amendment to Professional Services Agreement (“Amendment”) is made as of the 3rd day of January, 2022, by and between the Town of Fairplay (“Town”), a Statutory Colorado Municipality, with its principal place of business located at 901 Main Street, Fairplay, CO 80440; and Hahn Water Resources, LLC., a Colorado Limited Liability Corporation, with its principal place of business located at 6589 Elaine Road, Evergreen, CO 80439 (“Contractor”) and together with the Town, “Parties“.

NOW THEREFORE, in consideration of the promises and obligations set forth below, the Parties agree to amend the original Agreement as follows:

1. Pursuant to Section 4.1 of the Agreement approved on July 19, 2021 by adoption of Resolution No. 19, Series, 2021, the Parties agree to an extension of the term to February 26, 2022 for the completion of the investigation of a prospective water treatment facility due to following factors:
 - a. Completion of the investigation involves the testing of the Town’s dormant infiltration gallery and is dependent on the Town acquiring a specific, properly sized flowmeter which was delayed due to factors beyond the control of Town.
 - b. An extension of the term is also necessary for Contractor to prepare and submit a final report to the Town upon completion of investigation.
2. Except as amended herein, all other parts of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have set their hands to this Amendment on the day and year above first written.

TOWN OF FAIRPLAY, COLORADO

Frank Just, Mayor

ATTEST:

Janell Sciacca, Town Clerk

CONTRACTOR

By: _____
Title: _____

STATE OF COLORADO

COUNTY OF _____)

Acknowledged before me, a notary public, this _____ day of _____, 20____, by William F. Hahn, as _____ of Hahn Water Resources, LLC.

Witness my hand and official seal.

Notary Public
My commission expires: _____

**Proposed New Format and
All RED Items are New or
Require Discussion.**

**TOWN OF FAIRPLAY, COLORADO
SCHEDULE OF FEES
Effective TBD Per Sec. 4-4-10**

70

DEPARTMENT / ITEM			AUTHORITY	NOTE(S)		
ADMINISTRATION						
Copies	8 1/2 x 11 Letter	\$.25 / page		C.R.S. 24-72-205		
	8 1/2 x 14 Legal	\$.50 / page				
	11 x 17 Ledger	\$1.00 / page				
Fax	Send	\$1.00 / page				
	Receive	\$1.00 / page				
Insufficient Funds	NSF Returned Check Fee	\$34.00	Sec. 13-1-210			
Manual / Plan / Code Copies	Based on Plan Type/Size	\$5.00-\$25.00				
Municipal Code	USB Flash Drive	\$15.00	Sec. 1-3-110			
	Hard Copy Book With Tabs	Codifier Rate				
Notary Service	Depends on Service Type	\$0.00 - \$5.00		No Closing Documents		
Town Hall Mtg Room Rental*	1/2 Day Weekday (Up to 4 Hrs)	\$10.00		Not For Profit - Waived		
	Full Day Weekday (Over 4 Hrs)	\$20.00				
	Weekend	\$30.00				
	Post Event Cleaning	\$100.00/hr		1 Hour Minimum Charge		
Special Meetings	Fees for Accomodating Time Constraints	Staff & Attorney Costs	Sec. 2-2-70(c)	Reasonable Costs for Time		
TOWN CLERK						
Animal						
Dog License (Annual)	Unaltered	\$10.00	Sec. 7-6-160(d)	Limit of 3 Dogs / Dwelling Unit		
	Nuetered / Altered	\$5.00				
	Replacement /Duplicate License	\$1.00				
	Impound Fee	??	Sec. 7-6-180(d)			
Livestock Permit	Fowl or Rabbit	\$5.00/each	Sec. 7-7-40	Application Fee Non-Refundable Max 12 animals/acres		
	Annual Maximum Per Property	\$25.00				
	Horse, Cow, Sheep, Goat, Llama (25lbs+)	\$25.00	Sec. 7-7-50		1 acre / equine or bovine; 2,000 s.f./ goat, sheep, etc. w/ max of 4 / acre	
Business License	Initial Application	\$25.00	Sec. 6-1-40 (a)			
	Annual Renewal	\$25.00				
	Late Renewal Charge After January 31	\$12.50 or 50% Fee	Sec. 6-1-40 (b)	Mandatory per code (Shall pay)		
	Massage Parlor License - New	\$350.00				
	Massage Parlor License - Annual Renewal	\$150.00	Sec. 6-1-110(a)			
	Sexually Oriented Business License	\$350.00 + \$75.00 Mngr Reg		Sec. 16-27-190	Fees Charged Annual on Renewal 6-1-100(f) says no license required	
	Special Event Business License	\$10.00				
	Peddler/Solicitor/Transient	\$50.00/year	Sec. 6-1-120(c)			
	\$20.00/5 Consecutive Days					
Fireworks Permit	Public Display Application Fee		Sec. 10-9-30(a)			
Liquor Licenses*						
Application Related Fees	New Retail	\$1,000.00	Sec. 6-2-40	See CDOR Liquor Enforcement Fee Schedule DR8500		
	Annual Renewal	\$100.00				
	Late Renewal	\$500.00				
	Ownership Transfer	\$750.00				
	Change of Location	\$750.00				
	Corporate/LLC Change	\$100.00/Member				
	Manager Registration	\$75.00	As applicable by license type			
	Background Check	\$50.00/member				
	Special Event	\$100.00	Sec. 6-2-110(f)			
	Tastings Permit				Sec. 6-2-9(c)	
	Temporary Permit		Sec. 6-2-60			
	Annual License Fee	Beer & Wine	\$48.75			See CDOR Liquor Enforcement Fee Schedule DR8500
		Brew Pub	\$75.00			
		Club	\$41.25			
Distillery Pub		\$75.00				

Fermented Malt Beverage	\$3.75
Hotel & Restaurant	\$75.00
Retail Liquor Store	\$22.50
Tavern	\$75.00
Vinter's License	\$75.00

Lodging Tax Per Night Per Occupied Room \$2.00 Sec. 6-3-30 Voter Approved April 1, 2008

Noise Permit Application Fee ?? Sec. 10-10-70(a)

Records Requests
 Research & Retrieval Fee 33.58/hour C.R.S. 24-72-205(6)(b) 1st Hour is Free
 Paper Copies See Administration Bulk Rate for Large Requests
 Electronic Copies/Transmittal \$0.00
 Audio \$15.00
 Video \$25.00

COURT

Court Fees	Court Costs	\$31.00	Sec. 2-4-110
	Default Judgement Fee	\$30.00	
	Failure to Appear Fee	\$30.00	
	Training & Equipment Surcharge	\$15.00	Sec. 2-4-90
	Transcript - CD Only	\$15.00	
	Warrant Fee	\$50.00	
	Witness Fees	Same as District Court	Sec. 6-3-140
Copies	See Administration		

CEMETERY

Burial Fees	Casket Opening / Closing	\$300.00
	Cremains Opening / Closing	\$150.00
	Weekend/Holiday Service Charge	\$225.00
	Monument Deposit (Refundable)	\$300.00/each
	Cremation Hole	\$50.00
	Burial Application	
	Casket Disinterment	\$100.00
	Cremains Disinterment	\$50.00
Lot Purchase		

PARKS / RECREATION / EVENTS

Permits & Licenses	Commerical Fly Fishing Permit	\$150.00/Annually	Sec. 6-4-20	Proof of insurance required <i>Sec. 11-4-20 states all fishing must be conducted from shore, dock or wading; boating prohibited, but flotation devices can be permitted for fee per 11-4-30, no swimming.</i>
	Gold Panning Permit	\$10.00/daily \$40.00/weekly \$100.00/annually	Sec. 11-3-20 to 60	Use of Hand Tools Only & Gravity Flow Sluice. Electrical or Hand-Pump Sluice Devices PROHIBITED w/ limit of 1 Gallon Material Removal
	Violation Penalty	\$100.00 + Restitution		
	Street Closure / Parade Permit	\$10.00/half day	Sec. 16-1-100(a)	Same As Special Event Permit?
	Beach Camping Permit	\$8.00/day (4 Day Limit)	Sec. 11-4-60	See Beach & Reservoir Regulations
	Special Event Permit	Event Organizer Fee	Sec. 16-1-100(a)	For Vendor Without
Park Pavilion Rental Fees	Cohen Park W/ Electricity	\$10.00/day	Sec. 11-5-20	Deposit May be Required Based on size of group 1 Hour Minimum Charge
	Beach W/Out Electricity	\$10.00/day		
	Cemetery W/Out Electricity	\$10.00/day		
	Post Event Cleaning	\$100.00/hr		

BUILDING DEPARTMENT

Permits & Fees	Commercial	\$.75/s.f.*	Sec. 16-2-30 and Sec. 18-1-30 (109.2)
	Residential	\$1.00/s.f.*	
	Garage / Shed Over 120 s.f.	\$.50/s.f.*	
	Non-structural Remodel	\$165.00	
Other Permits	Building Move and Set	75% of Bldg Permit Fee*	
	Deck	\$110.00	
	Demolition	\$165.00	
	Driveway	\$55.00	
	Excavation	\$110.00	
	Fence	\$44.00	
	Mechanical	\$55.00	

	Residing	\$110.00	
	Reroofing	\$110.00	
	Site Review	\$0.00	
	Sign	\$55.00	Sec. 16-25-50
Fees and Bonds	Condominiumization Inspection Fee		Sec. 16-23-40(B)
	Reinspection		Sec. 18-1-30 (110.7)
	Performance / Security	\$1,000.00 / Unpaved \$2,000.00 / Paved	<i>Refundable After 1 Year Upon Approval by Inspector</i>
Surcharge	Applicable to All Building Permits	10%	<i>Surcharge may be higher at Town's discretion based on project</i>

PLANNING & DEVELOPMENT*

Land Use	Annexation	\$300.00	Sec. 16-2-40
	Appeal (Administrative or BOA)	\$100.00	Sec. 16-23-20; Sec. 16-22-100
	Rezoning	Residential \$150.00 Commercial \$250.00 PUD \$300.00	
	Minor PUD Amendment		
	Major PUD Amendment		
	Minor Site Plan Review		
	Major Site Plan Review		
	Special Use Permit	\$150.00	Sec. 16-6-30(A)
	Administrative Adjustment		
	Variance	\$100.00	
Subdivisions			
Application Fees - New	Major Residential/PUD	\$500.00 + \$25.00/lot	Sec. 16-13-20(A) <i>\$1,000 Deposit Required*</i>
	Minor Residential/PUD	\$300.00 + \$25.00/lot	Sec. 16-13-20(A) <i>\$1,000 Deposit Required*</i>
	Major Subdivision - Non-residential/PUD	\$750.00 + \$25.00/lot	Sec. 16-14-10(B) <i>\$1,000 Deposit Required*</i>
	Minor Subdivision - Non-residential/PUD	\$500.00 + \$25.00/lot	Sec. 16-15-20(B) <i>\$1,000 Deposit Required*</i>
Application Fees - Resubdivision	Major Residential/PUD	\$25.00/lot	
	Minor Residential/PUD	\$25.00/lot	
	Major Subdivision - Non-residential/PUD	\$5.00/1,000 s.f. non-residential lot area + \$25.00/residential lot	
	Minor Subdivision - Non-residential/PUD	\$5.00/1,000 s.f. non-residential lot area + \$15.00/residential lot	
Other Application Fees	Lot Line Adjustment	\$50.00	
	Lot Line Elimination	\$50.00	
	Subdivision/Development Improvement Agmt	\$100.00	
Professional Fees*	Deposit	\$1,000.00	<i>Required to cover reasonable costs</i>
	Planning Fees	Per PSA Approved by Board	
	Engineering	Per PSA Approved by Board	
	Other	Per PSA Approved by Board	
Other	Certificate of Appropriateness	\$0.00	Sec. 16-8-100
	Encroachment License	\$150.00	
	Exemption Plat		Sec. 16-20-50
	Flammable Materials	\$100.00	
	Home Occupation	\$50.00	
	Land Dedication Fee	Land or Cash	Sec. 16-18-20
	Parks/Open Space Fee - SFR	\$500.00/per unit	Sec. 16-18-20
	Parks/Open Space Fee - SFR	\$350.00/per unit	Sec. 16-18-20
	Parking Plan	\$50.00	
	Public Facilities Fees - Nonresidential	8% of Current Market Land	Sec. 16-18-20
	Public Notice & Hearing Related Fees	Actual Costs	Sec. 16-2-40(D)
	Recording Costs	As Applicable	

POLICE

Fees & Charges	VIN Inspection	\$10.00	Sec. 2-5-20
	VIN Certification	\$20.00	
	Records Copies	\$2.00/page	
	Records Search	\$25.00	
	PBTs	\$10.00	
	Civil Standby/Document Service Fee	\$25.00/hour	
	Towing/Impound Fees	??	
	Burn Permit	Issued by Fire District	Sec. 7-2-130

PUBLIC WORKS

Permits	Street Access / Cut Permit	\$550.00	Sec. 11-1-20	<i>Performance Bond/Security Required</i>
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WATER

Bulk Water	In Town Resident	\$5.70/1,000 gallons	Sec. 2-7-40
	Out of Town Resident	\$11.40/1,000 gallons	
Construction Water	Application		
	Meter Deposit		
	Rate		
Plant Investment Fee	1.0 SFE Tap	\$7,500.00	Sec. 13-1-60
	1.8 SFE Tap	\$13,500.00	
	4.0 SFE Tap	\$30,000.00	
	7.0 SFE Tap	\$52,500.00	
	16.0 SFE Tap	\$120,000.00	
	28.0 SFE Tap	\$210,000.00	
	Outside User Fees	Double	
Water Service / Usage Fees	Fire Protection Only Tap	25% of PIF + Tapping Charge	Sec. 13-1-80
	3/4" Tap / 1.0 SFE	\$34.00 + \$5.70 / 1,000 Gal	Sec. 13-1-60
	1" Tap / 1.8 SFE	\$61.20 + \$5.70 / 1,000 Gal	Sec. 13-1-10
	1 1/2" Tap / 4.0 SFE	\$136.00 + \$5.70 / 1,000 Gal	
	2" Tap / 7.0 SFE	\$238.00 + \$5.70 / 1,000 Gal	
	3" Tap / 16.0 SFE	\$544.00 + \$5.70 / 1,000 Gal	
	4" Tap / 28.0 SFE	\$952.00 + \$5.70 / 1,000 Gal	
Other Fees	Outside User Fees	Double	
	Accessory Dwelling Unit	1/4 of Primary Bldg Tap Fee	Sec. 16-7-10 (I)
	Backflow Testing (31 Days Past Due)	\$150.00	Sec. 13-2-20(e)
	Backflow Testing (61+ Days Past Due)	\$500.00	
	Delinquent Account Fee	\$5.00/month + 1% Interest on Balance	
	Failure to Provide Meter Access	\$20.00/incident	
	Failure to Pay/Code Violation	\$150.00	
	Lien Charge	\$100.00 + Recording/Other Fees	Sec. 13-1-240(a)
	NSF Returned Check Fee	\$31.00	Sec. 13-1-210
	Unauthorized Water Turn On	\$150.00	
	Water Shut Off / Turn On	\$25.00 / ea	Sec. 16-1-210
	Water Shut Off / Turn On - After Hours	\$50.00 / ea	
	Water Supply Protection District Permit	Testing, Engineering, Inspection	Sec. 13-3-70(a)

WASTEWATER

System Investment Fee (SIF)	1 - EQR (Equivalent Residential Unit)	\$8,351.00	Sec. 2-7-40
	1 - EQR (Outside User)	Double	
Wastewater Service Fee	1 - EQR User Fee	\$60.00	
	1 - EQR (Outside User)		
Other Fees	Accessory Dwelling Unit	1/4 of Primary Bldg Tap Fee	Sec. 16-7-10 (I)
	Delinquent Account Fee	\$5.00/month + 1% Interest on Balance	
	Disconnect / Reconnect Fee	\$1,000.00 / ea	
	Failure to Install Grease Trap/Interceptor	Per Section 1.9(K) of Rules	
	Failure to Maintain Grease Trap/Interceptor	50% of monthly use fee	
	Improper Discharge of Sewage	\$500.00 or Actual Cost of Damages	
	Inclusion Application	\$200.00 + Attorney Fees	
	Lien Charge	\$100.00 + Recording/Other Fees	
	Line Extension Inspection Fee	\$3.00/l.f. of Sewer Main	
	Line Extension Plan Review Fee	Costs of Engineering Review	
	Post Construction Bond	\$500.00	
Reinspection Fee	\$75.00		



MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator / Clerk

RE: Monthly Report

DATE: December, 2021 Monthly Report

PERSONNEL

- Town Staff was hit hard the last week of the year by COVID-19, but we look forward to coming out on the other side and hopefully moving past this pandemic for a healthier 2022!
- PD hired a FT Police Officer who is a 9 Year Veteran of the El Paso County Sheriff's Department

ADMINISTRATION / CLERK

- Attended and participated in Park County 5304 Transportation Planning Study Meeting December 1
- Holiday Bazaar and Colorado Christmas was a huge success with perfect weather
- Christmas Toys were successfully delivered to Boys & Girls Club
- Mayor Pro Tem Dodge and attended CDOT CFR Transportation Planning Region and PPACG Tri-County Study Stakeholder meetings December 6
- 2021 Amended and 2022 Budgets Successfully Adopted on December 6
- Sarah and I attended a CMCA Election Zoom Training on December 9
- Election preparations are underway and nomination petition packets are ready for the January 4 deadline
- The CDOT Highway Users Tax Fund report was completed and submitted
- The Mayor, Julie and I all attended the South Park Chamber Meeting on December 15
- Trustees and Staff volunteered for Salvation Bell Ringing on December 18
- Beginning preparations for April 5, 2022 Regular Municipal Election
- Completed Town-wide code violation site visits and will begin issuing courtesy letters January 2022
- Located Zoning Map CAD files and will work with County to update in January
- Town was served on a Condemnation case for Colorado Natural Gas and the Town Attorney and Engineer have been working out logistical and technical concerns with opposing counsel on the Town's behalf so as to protect our waterline and easement, etc.

- I met with DOLA Regional Manager Greg Winkler last month on several matters including ARPA funding, a fiscal stability initiative, asset inventory and capital improvement program, and general grant funding discussions. DOLA is now expecting a much larger influx of money for grants than originally expected in 2022 and the Town will be applying for as many of them as we possibly can.

DEVELOPMENT / LAND USE

- Staff held a Project Review/Status Meeting with Middlefork representatives December 2
- The Habitat project is nearing submittal completion and may require a special Board meeting in January in order to help them meet a grant funding deadline
- I am continuing to input Special Use, Lot Line, Variance, other Land Use Permits in a database
- I am also continuing work on updating online forms to make them fillable as well as add pertinent code information and associated submittal requirements
- Completion creation of master reference list of requirements by application type

CAPITAL PROJECTS:

1. 501 MAIN
 - Structural drawings were returned to Town and upon review the Mayor found multiple issues which will need correcting by architect before SGM can update again for bidding
 - All expenses were shifted to 2022 and we will be looking at grants to offset costs
2. COHEN PARK
 - PW continues to try obtain quotes for the Basketball Court and will install new net poles and sand for Volleyball Court when appropriate in 2022
 - The Playground install hit a couple snags and we have not seen the crew in multiple weeks. Public Works cleaned up the site due to aesthetic and safety concerns and Donovan will follow up with the company to express the Town’s concerns.

UPCOMING:

<ul style="list-style-type: none"> • Zoning Map Update • Municipal Code Updates • Public Works Manual Adoption(<i>Work Session</i>) • Infiltration Gallery/Water (<i>Work Session</i>) 	<ul style="list-style-type: none"> • Short Term Rental (<i>January 10 Work Session</i>) • Affordable Housing Discussion (<i>Work Session</i>) • April 5, 2022 Municipal Election • UDC Update Discussion (<i>Work Session</i>)
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MEMORANDUM

TO: Town of Fairplay Board of Trustees

FROM: Donovan Graham, Director of Public Works

RE: Staff Report

DATE: January 3rd, 2022

First let me start off by wishing all of you a Happy New Year.

Over the last month the entire public works staff have been busy with finishing up with most of the pothole issues. This spring we will hit them hard again, there is a road shared with the county (CR 3) that I have instructed the public works staff to go ahead and fill potholes there as weather permits.

Public works staff has also been working on yard clean up at the public works shop and will continue to do so throughout the winter we have already taken 14 dump truck loads of unnecessary material out to fill an excavated hole that we have by the sanitation plant.

Early December I travelled to Rapid City SD and checked out and operated 4 different Cat M140 AWD Motor Graders, after which I was able to make a deal with him for the in my opinion the best one, a 2012 140M2 AWD w/6000 Hrs., asking price was \$145,000 but selling price is \$140,000 plus shipping which is around \$3500. Included in the selling price is a full set of new tires (6) as well as a full service. I have been in contact with the Salesman and all services have been completed and the Machine is ready to go. This was budgeted for in 2022 under the Internal Service Fund.

The infiltration gallery testing will be conducted mid-January. All metering equipment has been installed and we are just waiting for the electricians the wire everything in to our systems. It will be exciting to see our production levels capable out of the gallery.

It was brought to my attention that the PTO was requesting crosswalks around the school and improvements to those and the signage on Main Street. CDOT replaced signs on Main Street and installed a flashing crosswalk sign in front of the Century Link building. The Town plans to add new crosswalks after the spring thaw at Hathaway & 8th and Castello & 8th.

Cohen Park installation is delayed due to weather and the Holidays. The Public works crew cleaned up the area and I spoke to the Foreman about the cleanliness and safety of the site and will follow up with the company as well.

I still haven't received any call backs from companies I have reached out to in Denver regarding bids for the Basketball court. I will try Colorado Springs this month. This spring the Public Works Crew will be revamping the volleyball court, setting new net posts and adding new sand to the court.

I am currently researching available grants to help in the purchase of communication equipment for public works and event staff.

I have been in contact with the engineers for the Habitat project and it seems like the project is finally moving forward.



Chief of Police - *Arthur Bo Schlunsen*
FAIRPLAY POLICE DEPARTMENT

December 30, 2021

To: Janell Sciacca, Town Administrator
From: Chief Bo Schlunsen
Re: Code Violations

Progress on Code Violations:

The 406 Bogue situation has improved very little. We gave both the resident and the property owner abatement letters a little over 30 days ago. A vehicle and some parts of a cut up vehicle have been removed but not much else, if any. I gave Officer Schlaff the task of serving the property owner a summons for the various violations this weekend. The Town attorney indicated this was the way to proceed.

I served a summons on the homeowner at 410 Fifth Street, for various code violations on 12-9-21 with a court date of 1-12-22. As far as I know, the homeowner has done nothing to take care of the violations.

Other violations around town are coming to the summons stage. Just like with mask/vax mandates, people just do not want to be told what to do with their junk. Something as easy as disposing of a worthless junk vehicle ends up taking up their time, as well as ours, and will cost them fines. I will be asking for substantial penalties for those going to court.

I will be working with the Town Administrator after the first of the year on compiling a complete list of code violations and start working through them. We will issue written courtesy notices as the initial step hoping for voluntary compliance prior to taking further formal or legal action.

