



# FRUITA COLORADO

## CITY COUNCIL SPECIAL MEETING

Fruita Civic Center

Monday, November 13, 2023 at 6:30 PM

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### AGENDA

*The link to join the join the meeting electronically will be posted prior to the meeting at <https://www.fruita.org/citycouncil/page/council-meeting-information>. You may also contact the City of Fruita at (970) 858-3663 for information to connect to the meeting. This agenda is for informational purposes only and items may be added or deleted at the discretion of the City Council. An executive session may be requested for any item appearing on the agenda.*

1. **CALL TO ORDER AND ROLL CALL**
2. **AGENDA - ADOPT/AMEND**
3. **PUBLIC PARTICPATION**

*This section is set aside for the City Council to LISTEN to comments by the public regarding items that do not otherwise appear on this agenda. Generally, the City Council will not discuss the issue and will not take an official action under this section of the agenda. Please limit comments to a three-minute period.*

4. **AGENDA ITEMS**

A. Enoch's Lake Proposal

B. BRIEFING ON NRCS PIFR AND DAM BREACH RFP - Briefing on NRCS Preliminary Investigative Feasibility Report and Summary of proposals received for engineering and construction services for dam breach at Fruita Reservoir #2

C. Fruita Mountain Properties Resolution

5. **CITY MANAGER'S REPORT**
6. **COUNCIL REPORTS AND ACTIONS**
7. **ADJOURN**

*In accordance with the Americans with Disabilities Act, persons who need accommodation in order to attend or participate in this meeting should contact the City Clerk's Office at 970-858-3663 within 48 hours prior to the meeting in order to request such assistance.*



# FRUITA

## COLORADO

## AGENDA ITEM COVER SHEET

**TO:** Fruita City Council and Mayor

**FROM:** Kimberly Bullen, Public Works Director  
Mary Elizabeth Geiger, City Attorney

**DATE:** November 13, 2023

**AGENDA TEXT:** Enoch's Lake Proposal

### BACKGROUND

The history of Enoch's Lake and the Fruita Mountain Properties has been presented and discussed at numerous City Council meetings and is available on the City's website at <https://www.fruita.org/publicworks/page/fruita-mountain-water-properties>.

At the September 19, 2023 Regular City Council meeting, City Council discussed the sale process for Enoch's Lake and provided the following direction to staff on next steps. City staff will work with Lori Chesnick the City's realtor to list Enoch's Lake property on the MLS until November 8, 2023 at the appraised value of \$425,000. The listing will include information that the property is encumbered by the Ute Water Right of First Refusal (ROFR) and the 2013 Agreement with Tipping for repayment of the non-monetary obligation (which requires the release of water from the lake for use by Tipping) as well as an agreement with Stanley Muhr for water. It would also include information that the dam is a jurisdictional dam, subject to State Dam inspector rules and regulations. Finally, it would state that ultimately any sale would have to be approved by City Council through the ordinance process as identified in the City Charter.

The MLS listing was posted on October 1, 2023 with all offers due at the close of business on November 8, 2023. The city received one offer that is included in the Council packet as well as the summary provided by the city's realtor Lori Chesnick. Ms. Chesnick will be in attendance to present the offer received and answer any questions Council may have.

The City cannot officially accept an offer for purchase of real property unless that offer goes through the Ordinance process to a second reading at which time the public hearing thereon will be held.

### FISCAL IMPACT

The conveyance of real property will result in a cash payment of \$500,000 and debt forgiveness of an additional \$145,393.36 the city owes to Mr. Ron Tipping for work he performed on several dams owned by the city. In addition, the City will no longer have operating or capital expenses associated with Enoch's Lake.

## **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

The City of Fruita's primary goal is to provide necessary core services to residents and businesses within the city limits. As an organization, the city is focused on aligning resources, time, and talent to provide high-quality services while impacting and increasing the quality of place, economic health, and lifestyle of the Fruita community. The Fruita Mountain Water Properties have provided necessary services to Fruita in the past but are no longer considered core services for the City of Fruita as they can no longer be used within the city limits.

## **RECOMMENDATION**

**STAFF'S RECOMMENDATION IS FOR COUNCIL TO DIRECT STAFF TO PROCEED WITH SUBMITTING THE ONE OFFER RECEIVED BY THE CITY FOR THE CONVEYANCE OF REAL PROPERTY REFERRED TO AS ENOCH'S LAKE AND WATER RIGHTS LOCATED ON PINON MESA TO UTE WATER FOR FIRST RIGHT OF REFUSAL AS REQUIRED IN THE AMENDED AND RESTATED AGREEMENT FOR DOMESTIC WATER SERVICE DATED JUNE 20, 2023, AND TO PROCEED WITH PUBLISHING THE FIRST READING OF AN ORDINANCE FOR CONVEYANCE OF SAID REAL PROPERTY AND WATER RIGHTS ON NOVEMBER 21, 2023 AND THE SECOND READING OF SAID ON DECEMBER 19, 2023.**



Chesnick Realty, LLC  
137 N Peach St Fruita, CO 81521  
Lori Chesnick  
Broker/Owner  
lori@chesnickrealtyllc.com  
Ph: 970-858-8238  
Fax: 970-858-8266

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS4-6-21) (Mandatory 1-22)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

### CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

- Property with No Residences)
- Property with Residences-Residential Addendum Attached)

Date: 11/3/2023

#### AGREEMENT

1. **AGREEMENT.** Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

2. **PARTIES AND PROPERTY.**

2.1. Buyer. Stan Muhr and Rodney C Power and Ronald E Tipping (Buyer) will take title to the Property described below as  Joint Tenants  Tenants In Common  Other .

2.2. **No Assignability.** This Contract IS NOT assignable by Buyer unless otherwise specified in Additional Provisions.

2.3. Seller. City of Fruita (Seller) is the current owner of the Property described below.

2.4. **Property.** The Property is the following legally described real estate in the County of Mesa, Colorado (insert legal description):

COMM E 1/4 COR SEC 7 T14 R101 6TH PM WH SL/16TH COR ON THE E LI OF SEC 6 BRS N 01D22`28" E 3850.40FT TH N 01D22`28" E 1283.37FT ALG E LI SD SEC 7 TO THE S LI OF THE NE4NE4 SD SEC 7 TH S 89D08`55" W 1153.25FT ALG SD S LI NE4NE4 SEC 7 TO A P ON ESTRLY ROW LI OF CO RD AS DESC IN B-2 P-98 FILE NO 187 & AS SHOWN ON A MAP RECD B-4336 P-920 MESA CO RECDS THE POB TH S 89D45`00" W 22.34FT TO CL OF SD CO RD TH ALG SD CL OF SD CO RD THE FOLL 31 COURSES N 26D42`24" E 59.39FT N 30D22`24" E 79.60FT N 37D08`08" E 85.54FT N 38D00`21" E 69.48FT N 28D42`56" E 51.35FT N 26D48`03" E 63.54FT N 29D50`44" E 54.94FT N 35D29`18" E 113.15FT N 39D09`07" E 65.15FT N 27D19`57 E 26.90FT N 11D56`52" E 53.23FT N 15D19`29" E 46.62FT N 30D43`42" E 65.37FT N 31D41`28" E 42.82FT TH ALG CVE TO THE LT WI A RAD 333.28FT AND A CHD BRS N 24D43`59" E 82.67FT N 21D37`26" E 241.06FT N 25D07`01"E 120.43FT N 29D31`25" E 114.32FT TH ALG CVE TO THE RT WI A RAD 661.09FT AND A CHD BRS N 38D03`08" E 192.92 FEET N 47D46`30" E 98.57FT N 47D10`50" E 136.07FT N 43D00`06" E 201.78FT N 28D50`33" E 108.76FT N 02D12`41" W 124.27FT N 05D06`00" E 154.11FT TH ALG A CVE TO THE RT WI A RAD OF 342.82FT AND CHD BRS N 18D48`38" E 131.81FT N 34D03`27" E 141.88FT N 42D24`39" E 191.14FT N 43D35`20" E 346.00FT N 29D31`10" E 19.75FT N 49D34`41" E 79.61FT N 55D30`00" E 270.00FT S 88D19`00" E 308.00FT S 55D30`00" E 272.00FT S 20D52`00" W

348.00FT S 15D54`42" W 871.00FT S 05D40`00" E 312.57FT S 07D27`32" E 191.63FT S  
05D04`02" W 640.37FT N 84D57`04" W 204.58FT N 57D22`04" W 138.86FT N 12D58`05" W  
101.20FT N 21D48`15" W 193.85FT N 31D13`45" W 213.17FT N 30D50`43" W 187.52FT N  
85D40`41" W 138.88FT S 72D53`13" W 139.25FT S 86D06`39" W 104.66FT S 69D05`55" W  
143.24FT S 58D17`45" W 250.63FT N 82D37`05" W 204.03FT TO A P ON SD ESTRLY ROW LI  
OF SD CO RD TH ALG SD ESTRLY ROW LI OF SD CO RD THE FOLL 16 COURSES S  
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24D47`18" W 86.90FT S 31D41`28" W 42.62FT S 30D43`42" W 62.50FT S 15D19`29" W 43.33FT  
S 11D56`52" W 54.81FT S 24D19`57" W 31.67FT S 39D09`07" W 67.11FT S 35D29`18" W  
111.53FT S 29D 50`44" W 53.42FT S 26D48`03" W 63.34FT S 28D42`56" W 53.31FT S  
38D00`21" W 70.96FT S 37D08`08" W 84.20FT S 30D22`24" W 77.78FT S 26D48`45" W 48.63FT  
TO POB - 51.41AC

**Tax Parcel # 3223-053-00-003**

**Title Company to verify legal description**

known as: **TBD Enoch`s Lake, Glade Park, CO 81624**

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

**2.5. Inclusions.** The Purchase Price includes the following items (Inclusions):

**2.5.1. Inclusions.** The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under **Exclusions**:

**(1) three bin bear proof trashcan**

**3 Vault style toilets ( one double structure and one single structure)**

**4 concrete picnic tables and seats**

**2-3 Parks picnic tables**

**Estimated- 2.26 miles of 8 inch PVC plastic irrigation pipe ( Enoch`s Lake to Muhr`s meter)**

**Estimated-1.92 miles of PVC and Steel pipe ( mixed repair sections from Muhr`s meter to**

**Windy Point Tie-in)**

**One headgate structure**

**Two meter pits**

**One Flush Diversion Box**

**One Weir**

**One Spring Box**

**One Air Vent**

**One Isolation/Diversion Flush Valve**

**Approximately 35 items on Enoch`s Side pipeline such as valves, drains, air relief vents, hydrants, etc.**

**All water pipes, pipelines, dams, intakes and other items appurtenant to the water rights and land and for the use thereof.**

If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

**2.5.2. Encumbered Inclusions.** Any Inclusions owned by Seller (i.e., owned solar panels) must be conveyed at Closing by Seller free and clear of all taxes (except personal property and general real estate taxes for the year of Closing), liens and encumbrances, except:

**2.5.3. Personal Property Conveyance.** Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

**2.5.4. Leased Items.** The following personal property is currently leased to Seller which will be transferred to Buyer at Closing (Leased Items):

**2.6. Exclusions.** The following items are excluded (Exclusions):

**2.7. Water Rights, Well Rights, Water and Sewer Taps.**

115  **2.7.1. Deeded Water Rights.** The following legally described water rights:  
116 Mirror Ditch No. 1, Mirror Lake Reservoir No. 1 (aka Enoch`s Lake) and Springs R and N, less  
117 any water rights conveyed to Ronald E. Tipping pursuant to that Agreement between the City  
118 of Fruita and Ronald E. Tipping, Ronald C. Power and William R. Patterson dated January 3,  
119 2014

120 Any deeded water rights will be conveyed by a good and sufficient Quit claim deed at Closing.

121  **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§  
122 2.7.1., 2.7.3., 2.7.4. and 2.7.5., will be transferred to Buyer at Closing:

123  **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer  
124 understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well"  
125 used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership  
126 form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in  
127 the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for  
128 the well and pay the cost of registration. If no person will be providing a closing service in connection with the  
129 transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is .

130  **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as  
131 follows:  
132 None

133 **2.7.5. Water and Sewer Taps.** The parties agree that water and sewer taps listed below for the  
134 Property are being conveyed as part of the Purchase Price as follows:  
135 None

136 **If any water or sewer taps are included in the sale, Buyer is advised to obtain, from the provider,**  
137 **written confirmation of the amount remaining to be paid, if any, time and other restrictions for**  
138 **transfer and use of the taps.**

139 **2.7.6. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2. (Other Rights  
140 Relating to Water), § 2.7.3. (Well Rights), § 2.7.4. (Water Stock Certificates), or § 2.7.5. (Water and Sewer  
141 Taps), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

142 **2.7.7. Water Rights Review.** Buyer  **Does**  **Does Not** have a Right to Terminate if  
143 examination of the Water Rights is unsatisfactory to Buyer on or before the **Water Rights Examination**  
144 **Deadline.**

145 **2.8. Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows:

146 **3. DATES, DEADLINES AND APPLICABILITY.**

147 **3.1. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 3	Time of Day Deadline	
2	§ 4	Alternative Earnest Money Deadline	
		<b>Title</b>	
3	§ 8	Record Title Deadline (and Tax Certificate)	
4	§ 8	Record Title Objection Deadline	
5	§ 8	Off-Record Title Deadline	
6	§ 8	Off-Record Title Objection Deadline	
7	§ 8	Title Resolution Deadline	
8	§ 8	Third Party Right to Purchase/Approve Deadline	
		<b>Owners' Association</b>	
9	§ 7	Association Documents Deadline	
10	§ 7	Association Documents Termination Deadline	

175			<b>Seller's Disclosures</b>	
176	11	§ 10	Seller's Property Disclosure Deadline	
177				
178	12	§ 10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	
179				
180			<b>Loan and Credit</b>	
181				
182	13	§ 5	New Loan Application Deadline	
183	14	§ 5	New Loan Terms Deadline	
184	15	§ 5	New Loan Availability Deadline	
185	16	§ 5	Buyer's Credit Information Deadline	
186	17	§ 5	Disapproval of Buyer's Credit Information Deadline	
187				
188	18	§ 5	Existing Loan Deadline	
189				
190	19	§ 5	Existing Loan Termination Deadline	
191	20	§ 5	Loan Transfer Approval Deadline	
192	21	§ 4	Seller or Private Financing Deadline	
193				
194			<b>Appraisal</b>	
195				
196	22	§ 6	Appraisal Deadline	
197	23	§ 6	Appraisal Objection Deadline	
198	24	§ 6	Appraisal Resolution Deadline	
199				
200			<b>Survey</b>	
201	25	§ 9	New ILC or New Survey Deadline	
202	26	§ 9	New ILC or New Survey Objection Deadline	
203	27	§ 9	New ILC or New Survey Resolution Deadline	
204				
205			<b>Inspection and Due diligence</b>	
206				
207	28	§ 2	Water Rights Examination Deadline	
208	29	§ 8	Mineral Rights Examination Deadline	
209	30	§ 10	Inspection Termination Deadline	
210	31	§ 10	Inspection Objection Deadline	
211	32	§ 10	Inspection Resolution Deadline	
212	33	§ 10	Property Insurance Termination Deadline	
213	34	§ 10	Due Diligence Documents Delivery Deadline	
214	35	§ 10	Due Diligence Documents Objection Deadline	
215	36	§ 10	Due Diligence Documents Resolution Deadline	
216	37	§ 10	Environmental Inspection Termination Deadline	
217	38	§ 10	ADA Evaluation Termination Deadline	
218	39	§ 10	Conditional Sale Deadline	
219	40	§ 10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)	
220	41	§ 11	Estoppel Statements Deadline	
221	42	§ 11	Estoppel Statements Termination Deadline	
222				
223			<b>Closing and Possession</b>	
224	43	§ 12	Closing Date	
225	44	§ 17	Possession Date	

230	45	§ 17	Possession Time	
234	46	§ 27	Acceptance Deadline Date	
236	47	§ 27	Acceptance Deadline Time	
237	48			
238	49			

240 **3.2. Applicability of Terms.** If any deadline blank in § 3.1. (Dates and Deadlines) is left blank or  
 241 completed with "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision  
 242 containing the deadline is deleted. Any box checked in this Contract means the corresponding provision  
 243 applies. If no box is checked in a provision that contains a selection of "None", such provision means that  
 244 "None" applies.  
 245

246 The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have  
 247 signed this Contract. The abbreviation "N/A" as used in this Contract means not applicable.  
 248

249 **3.3. Day; Computation of Period of Days; Deadlines.**

250 **3.3.1. Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m.,  
 251 United States Mountain Time (Standard or Daylight Savings, as applicable). Except however, if a **Time of**  
 252 **Day Deadline** is specified in § 3.1. (Dates and Deadlines), all Objection Deadlines, Resolution Deadlines,  
 253 Examination Deadlines and Termination Deadlines will end on the specified deadline date at the time of day  
 254 specified in the **Time of Day Deadline**, United States Mountain Time. If **Time of Day Deadline** is left blank  
 255 or "N/A" the deadlines will expire at 11:59 p.m., United States Mountain Time.  
 256

257 **3.3.2. Computation of Period of Days.** In computing a period of days (e.g., three days after  
 258 MEC), when the ending date is not specified, the first day is excluded and the last day is included.  
 259

260 **3.3.3. Deadlines.** If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday  
 261 (Holiday), such deadline  Will  Will Not be extended to the next day that is not a Saturday, Sunday or  
 262 Holiday. Should neither box be checked, the deadline will not be extended.  
 263

264 **4. PURCHASE PRICE AND TERMS.**

265 **4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as  
 266 follows:  
 267

268	Item No.	Reference	Item	Amount	Amount
269	1	§ 4.1.	Purchase Price	\$ 500,000.00	
270	2	§ 4.3.	Earnest Money		\$ 5,000.00
271	3	§ 4.5.	New Loan		\$
272	4	§ 4.6.	Assumption Balance		\$
273	5	§ 4.7.	Private Financing		\$
274	6	§ 4.7.	Seller Financing		\$
275	7				\$
276	8				\$
277	9	§ 4.4.	Cash at Closing		\$ 495,000.00
278	10		Total	\$ 500,000.00	\$ 500,000.00

280 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$ (Seller Concession). The Seller  
 281 Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed  
 282 by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of  
 283 allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs,  
 284 loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or  
 285 expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere  
 286 in this Contract.  
 287



4.3. **Earnest Money.** The Earnest Money set forth in this Section, in the form of a Check or Wire, will be payable to and held by Heritage Title Company (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

4.3.1. **Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.

4.3.2. **Disposition of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 24 and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form. If Seller is entitled to the Earnest Money, and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not already been paid to Seller, following receipt of an Earnest Money Release form, Buyer agrees to execute and return to Seller or Broker working with Seller, written mutual instructions (e.g., Earnest Money Release form), within three days of Buyer's receipt.

4.3.2.1. **Seller Failure to Timely Return Earnest Money.** If Seller fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Seller is in default and liable to Buyer as set forth in "If Seller is in Default", § 20.2. and § 21, unless Seller is entitled to the Earnest Money due to a Buyer default.

4.3.2.2. **Buyer Failure to Timely Release Earnest Money.** If Buyer fails to timely execute and return the Earnest Money Release Form, or other written mutual instructions, Buyer is in default and liable to Seller as set forth in "If Buyer is in Default, § 20.1. and § 21, unless Buyer is entitled to the Earnest Money due to a Seller Default.

4.4. **Form of Funds; Time of Payment; Available Funds.**

4.4.1. **Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.4.2. **Time of Payment.** All funds, including the Purchase Price to be paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT.**

4.4.3. **Available Funds.** Buyer represents that Buyer, as of the date of this Contract,  **Does**  **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.5. **New Loan.** (Omitted as inapplicable)

4.6. **Assumption.** (Omitted as inapplicable)

4.7. **Seller or Private Financing.** (Omitted as inapplicable)

**TRANSACTION PROVISIONS**

5. **FINANCING CONDITIONS AND OBLIGATIONS.** (Omitted as inapplicable)

5.3. **Credit Information.** (Omitted as inapplicable)

5.4. **Existing Loan Review.** (Omitted as inapplicable)

6. **APPRAISAL PROVISIONS.**

6.1. **Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified

appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

**6.2. Appraised Value.** The applicable appraisal provision set forth below applies to the respective loan type set forth in § 4.5.3., or if a cash transaction (i.e., no financing), § 6.2.1. applies.

**6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**:

**6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated; or

**6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

**6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, (i.e., on or before expiration of **Appraisal Resolution Deadline**).

**6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements, removals or repairs, including any specified in the Appraisal (Lender Property Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following Seller's receipt of the Lender Property Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Property Requirements; (2) the Lender Property Requirements have been completed; or (3) the satisfaction of the Lender Property Requirements is waived in writing by Buyer.

**6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by  Buyer  Seller. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's agent or all three.

**7. OWNERS' ASSOCIATIONS.** This Section is applicable if the Property is located within one or more Common Interest Communities and subject to one or more declarations (Association).

**7.1. Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

**7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association Documents (defined below), at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

408 **7.3. Association Documents.** Association documents (Association Documents) consist of the  
 409 following:

410 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of organization,  
 411 operating agreements, rules and regulations, party wall agreements and the Association's responsible  
 412 governance policies adopted under § 38-33.3-209.5, C.R.S.;

413 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or  
 414 managers' meetings; such minutes include those provided under the most current annual disclosure required  
 415 under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the  
 416 minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent  
 417 minutes, if any (§§ 7.3.1. and 7.3.2., collectively, Governing Documents); and

418 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual  
 419 Disclosure, including, but not limited to, property, general liability, association director and officer professional  
 420 liability and fidelity policies. The list must include the company names, policy limits, policy deductibles,  
 421 additional named insureds and expiration dates of the policies listed (Association Insurance Documents);

422 **7.3.4.** A list by unit type of the Association's assessments, including both regular and special  
 423 assessments as disclosed in the Association's last Annual Disclosure;

424 **7.3.5.** The Association's most recent financial documents which consist of: (1) the Association's  
 425 operating budget for the current fiscal year, (2) the Association's most recent annual financial statements,  
 426 including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual  
 427 Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the  
 428 fees and charges (regardless of name or title of such fees or charges) that the Association's community  
 429 association manager or Association will charge in connection with the Closing including, but not limited to,  
 430 any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or  
 431 update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record  
 432 Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves  
 433 or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4. and 7.3.5., collectively, Financial  
 434 Documents);

435 **7.3.6.** Any written notice from the Association to Seller of a "construction defect action" under §  
 436 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or  
 437 disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's  
 438 obligation to disclose adverse material facts as required under § 10.2. (Disclosure of Adverse Material Facts;  
 439 Subsequent Disclosure; Present Condition) including any problems or defects in the common elements or  
 440 limited common elements of the Association property.

441 **7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents.  
 442 Buyer has the Right to Terminate under § 24.1., on or before **Association Documents Termination**  
 443 **Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole  
 444 subjective discretion. Should Buyer receive the Association Documents after **Association Documents**  
 445 **Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 24.1. by Buyer's Notice to Terminate  
 446 received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does  
 447 not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be  
 448 received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before  
 449 Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions  
 450 of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision,  
 451 notwithstanding the provisions of § 8.6. (Third Party Right to Purchase/Approve).

## 452 **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

### 453 **8.1. Evidence of Record Title.**

454  **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the  
 455 title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record**  
 456 **Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title  
 457 Commitment), in an amount equal to the Purchase Price, or if this box is checked,  an **Abstract of Title**  
 458 certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as

soon as practicable at or after Closing.

**8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.

If neither box in § 8.1.1. or § 8.1.2. is checked, § 8.1.1. applies.

**8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment  Will  Will Not contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  Other .

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.7. (Right to Object to Title, Resolution).

**8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

**8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance policy.

**8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

**8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.7. (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2. (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1. (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

**8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by

public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2. (Record Title) and § 13 (Transfer of Title), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3. (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

**8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

**8.5. Tax Certificate.** A tax certificate paid for by  Seller  Buyer, for the Property listing any special taxing districts that affect the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is located within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may terminate, on or before **Record Title Objection Deadline**. Should Buyer receive the Tax Certificate after **Record Title Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 24.1. by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Tax Certificate. If Buyer does not receive the Tax Certificate, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Tax Certificate and the inclusion of the Property in a special taxing district, if applicable, as satisfactory and Buyer waives any Right to Terminate under this provision. If Buyer's loan specified in §4.5.3. (Loan Limitations) prohibits Buyer from paying for the Tax Certificate, the Tax Certificate will be paid for by Seller.

**8.6. Third Party Right to Purchase/Approve.** If any third party has a right to purchase the Property (e.g., right of first refusal on the Property, right to purchase the Property under a lease or an option held by a third party to purchase the Property) or a right of a third party to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the third-party holder of such right exercises its right this Contract will terminate. If the third party's right to purchase is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing. If the third party right to purchase is exercised or approval of this Contract has not occurred on or before **Third Party Right to Purchase/Approve Deadline**, this Contract will then terminate. Seller will supply to Buyer, in writing, details of any Third Party Right to Purchase the Property on or before the Record Title Deadline.

**8.7. Right to Object to Title, Resolution.** Buyer has a right to object or terminate, in Buyer's sole subjective discretion, based on any title matters including those matters set forth in § 8.2. (Record Title), § 8.3. (Off-Record Title), § 8.5. (Special Taxing District) and § 13 (Transfer of Title). If Buyer exercises Buyer's rights to object or terminate based on any such title matter, on or before the applicable deadline, Buyer has the following options:

**8.7.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on

the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2. (Record Title) or § 8.3. (Off-Record Title) the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

**8.7.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 24.1., on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole subjective discretion.

**8.8. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property and various laws and governmental regulations concerning land use, development and environmental matters.

**8.8.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**

**8.8.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.**

**8.8.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING FACILITIES.**

**8.8.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.**

**8.8.5. Title Insurance Exclusions.** Matters set forth in this Section and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

**8.9. Mineral Rights Review.** Buyer  Does  Does Not have a Right to Terminate if examination of the Mineral Rights is unsatisfactory to Buyer on or before the **Mineral Rights Examination Deadline**.

**9. NEW ILC, NEW SURVEY.**

**9.1. New ILC or New Survey.** If the box is checked, (1)  **New Improvement Location Certificate (New ILC)**; or, (2)  **New Survey** in the form of ; is required and the following will apply:

**9.1.1. Ordering of New ILC or New Survey.**  Seller  Buyer will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

**9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be paid, on or before Closing, by:  Seller  Buyer or:

**9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

**9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by

the surveyor to all those who are to receive the New ILC or New Survey.

**9.2. Buyer’s Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer’s sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

**9.3. New ILC or New Survey Objection.** Buyer has the right to review and object based on the New ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer’s sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3. or § 13:

**9.3.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated; or

**9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

**9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer’s written withdrawal of the New ILC or New Survey Objection before such termination (i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**).

**DISCLOSURE, INSPECTION AND DUE DILIGENCE**

**10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE OF WATER.**

**10.1. Seller’s Property Disclosure.** On or before **Seller’s Property Disclosure Deadline**, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission’s Seller’s Property Disclosure form completed by Seller to Seller’s actual knowledge and current as of the date of this Contract.

**10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.** Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller’s new disclosure on the earlier of Closing or five days after Buyer’s receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an “**As Is**” condition, “**Where Is**” and “**With All Faults.**”

**10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property, Leased Items, and Inclusions (Inspection), at Buyer’s expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions and Leased Items, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer’s sole subjective discretion, Buyer may:

**10.3.1. Inspection Termination.** On or before the **Inspection Termination Deadline**, notify Seller in writing, pursuant to § 24.1., that this Contract is terminated due to any unsatisfactory condition, provided the Buyer did not previously deliver an Inspection Objection. Buyer’s Right to Terminate under this provision expires upon delivery of an Inspection Objection to Seller pursuant to § 10.3.2.; or

**10.3.2. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to

700 Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct.

701 **10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before  
 702 **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on  
 703 or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline**  
 704 unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination (i.e., on  
 705 or before expiration of **Inspection Resolution Deadline**). Nothing in this provision prohibits the Buyer and  
 706 the Seller from mutually terminating this Contract before the Inspection Resolution Deadline passes by  
 707 executing an Earnest Money Release.

708 **10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other  
 709 written agreement between the parties, is responsible for payment for all inspections, tests, surveys,  
 710 engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that  
 711 occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any  
 712 kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold  
 713 Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any  
 714 such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by  
 715 Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including  
 716 Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the  
 717 termination of this Contract. This § 10.4. does not apply to items performed pursuant to an Inspection  
 718 Resolution.

719 **10.5. Insurability.** Buyer has the Right to Terminate under § 24.1., on or before **Property Insurance**  
 720 **Termination Deadline**, based on any unsatisfactory provision of the availability, terms and conditions and  
 721 premium for property insurance (Property Insurance) on the Property, in Buyer's sole subjective discretion.

722 **10.6. Due Diligence.**

723 **10.6.1. Due Diligence Documents.** Seller agrees to deliver copies of the following documents  
 724 and information pertaining to the Property and Leased Items (Due Diligence Documents) to Buyer on or  
 725 before **Due Diligence Documents Delivery Deadline**:

726 **10.6.1.1. Occupancy Agreements.** All current leases, including any amendments or other  
 727 occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining  
 728 to the Property that survive Closing are as follows (Leases):

729 **10.6.1.2. Leased Items Documents.** If any lease of personal property (§ 2.5.4., Leased  
 730 Items) will be transferred to Buyer at Closing, Seller agrees to deliver copies of the leases and information  
 731 pertaining to the personal property to Buyer on or before **Due Diligence Documents Delivery Deadline**.  
 732 Buyer  Will  Will Not assume the Seller's obligations under such leases for the Leased Items (§ 2.5.4.,  
 733 Leased Items).

734 **10.6.1.3. Encumbered Inclusions Documents.** If any Inclusions owned by Seller are  
 735 encumbered pursuant to § 2.5.2. (Encumbered Inclusions) above, Seller agrees to deliver copies of the  
 736 evidence of debt, security and any other documents creating the encumbrance to Buyer on or before **Due**  
 737 **Diligence Documents Delivery Deadline**. Buyer  Will  Will Not assume the debt on the Encumbered  
 738 Inclusions (§ 2.5.2., Encumbered Inclusions).

739 **10.6.1.4. Other Documents.** If the respective box is checked, Seller agrees to additionally  
 740 deliver copies of the following:

741  **10.6.1.4.1.** All contracts relating to the operation, maintenance and management of the  
 742 Property;

743  **10.6.1.4.2.** Property tax bills for the last years;

744  **10.6.1.4.3.** As-built construction plans to the Property and the tenant improvements,  
 745 including architectural, electrical, mechanical and structural systems; engineering reports; and permanent  
 746 Certificates of Occupancy, to the extent now available;

747  **10.6.1.4.4.** A list of all Inclusions to be conveyed to Buyer;

748  **10.6.1.4.5.** Operating statements for the past years;

749  **10.6.1.4.6.** A rent roll accurate and correct to the date of this Contract;



**10.6.1.4.7.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

**10.6.1.4.8.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past years;

**10.6.1.4.9.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3.);

**10.6.1.4.10.** Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

**10.6.1.4.11.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

**10.6.1.4.12.** All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

**10.6.1.4.13.** Other:

**10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object based on the Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

**10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated; or

**10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

**10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination (i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**).

**10.6.3. Zoning.** Buyer has the Right to Terminate under § 24.1., on or before **Due Diligence Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

**10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable.  Seller  Buyer will order or provide **Phase I Environmental Site Assessment, Phase II Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or , at the expense of  Seller  Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Termination Deadline** will be extended by days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event,  Seller  Buyer must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4., Buyer has the Right to Terminate under § 24.1., on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on

any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer has the Right to Terminate under § 24.1., on or before **ADA Evaluation Termination Deadline**, based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

**10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that certain property owned by Buyer and commonly known as . Buyer has the Right to Terminate under § 24.1. effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate under this provision.

**10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer  Does  Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property.  There is **No Well**. Buyer  Does  Does Not acknowledge receipt of a copy of the current well permit.

**Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

**10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.

**10.10. Lead-Based Paint. [Intentionally Deleted - See Residential Addendum if applicable]**

**10.11. Carbon Monoxide Alarms. [Intentionally Deleted - See Residential Addendum if applicable]**

**10.12. Methamphetamine Disclosure. [Intentionally Deleted - See Residential Addendum if applicable]**

## 11. TENANT ESTOPPEL STATEMENTS.

**11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on or before **Estoppel Statements Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease stating:

**11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;

**11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

**11.1.3.** The amount of any advance rentals paid, rent concessions given and deposits paid to Seller;

**11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;

**11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and

**11.1.6.** That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease demising the premises it describes.

**11.2. Seller Estoppel Statement.** In the event Seller does not receive from all tenants of the Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents required §11.1. above and deliver the same to Buyer on or before **Estoppel Statements Deadline**.

**11.3. Estoppel Statements Termination.** Buyer has the Right to Terminate under § 24.1., on or before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel**

875 **Statements Deadline.** Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.  
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## CLOSING PROVISIONS

### 12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

881 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the  
 882 Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to  
 883 Buyer and Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer  
 884 acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required  
 885 loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any  
 886 additional information and documents required by Closing Company that will be necessary to complete this  
 887 transaction. Buyer and Seller will sign and complete all customary or reasonably required documents at or  
 888 before Closing.

889 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions  **Are**  
 890  **Are Not** executed with this Contract.

891 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the  
 892 date specified as the **Closing Date** or by mutual agreement at an earlier date. At Closing, Seller agrees to  
 893 deliver a set of keys for the Property to Buyer. The hour and place of Closing will be as designated by seller.

894 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent  
 895 of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title  
 896 companies).

897 **12.5. Assignment of Leases.** Seller must assign to Buyer all Leases at Closing that will continue  
 898 after Closing and Buyer must assume Seller's obligations under such Leases. Further, Seller must transfer to  
 899 Buyer all Leased Items and assign to Buyer such leases for the Leased Items accepted by Buyer pursuant to  
 900 § 2.5.4. (Leased Items).  
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904 **13. TRANSFER OF TITLE.** Subject to Buyer's compliance with the terms and provisions of this Contract,  
 905 including the tender of any payment due at Closing, Seller must execute and deliver the following good and  
 906 sufficient deed to Buyer, at Closing:  special warranty deed  general warranty deed  
 907  bargain and sale deed  quit claim deed  personal representative's deed  deed. Seller, provided  
 908 another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer,  
 909 at Closing.  
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912 Unless otherwise specified in § 29 (Additional Provisions), if title will be conveyed using a special  
 913 warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined  
 914 in §38-30-113(5)(a), C.R.S.  
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916 **14. PAYMENT OF LIENS AND ENCUMBRANCES.** Unless agreed to by Buyer in writing, any amounts  
 917 owed on any liens or encumbrances securing a monetary sum against the Property and Inclusions, including  
 918 any governmental liens for special improvements installed as of the date of Buyer's signature hereon,  
 919 whether assessed or not, and previous years' taxes, will be paid at or before Closing by Seller from the  
 920 proceeds of this transaction or from any other source.  
 921

### 15. CLOSING COSTS, FEES, ASSOCIATION STATUS LETTER AND DISBURSEMENTS, TAXES AND WITHHOLDING.

922 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all  
 923 other items required to be paid at Closing, except as otherwise provided herein.

924 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by  
 925  Buyer  Seller  **One-Half by Buyer and One-Half by Seller**  **Other** .  
 926

927 **15.3. Association Fees and Required Disbursements.** At least fourteen days prior to **Closing Date**,  
 928 Seller agrees to promptly request that the Closing Company or the Association deliver to Buyer a current  
 929 Status Letter, if applicable. Any fees associated with or specified in the Status Letter will be paid as follows:  
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15.3.1. **Status Letter Fee.** Any fee incident to the issuance of Association's Status Letter must be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.3.2. **Record Change Fee.** Any Record Change Fee must be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.3.3. **Assessments, Reserves or Working Capital.** All assessments required to be paid in advance (other than Association Assessments as defined in § 16.2. (Association Assessments), reserves or working capital due at Closing must be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.3.4. **Other Fees.** Any other fee listed in the Status Letter as required to be paid at Closing will be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.4. **Local Transfer Tax.** Any Local Transfer Tax must be paid at Closing by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.5. **Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be paid when due by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.6. **Private Transfer Fee.** Any private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.7. **Water Transfer Fees.** Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$ for:

- Water Stock/Certificates  Water District
- Augmentation Membership  Small Domestic Water Company

and must be paid at Closing by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.8. **Utility Transfer Fees.** Utility transfer fees can change. Any fees to transfer utilities from Seller to Buyer must be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  N/A.

15.9. **FIRPTA and Colorado Withholding.**

15.9.1. **FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller  IS a foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

15.9.2. **Colorado Withholding.** The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

16. **PRORATIONS AND ASSOCIATION ASSESSMENTS.**

16.1. **Prorations.** The following will be prorated to the **Closing Date**, except as otherwise provided:

16.1.1. **Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on

- Taxes for the Calendar Year Immediately Preceding Closing
- Most Recent Mill Levy and Most Recent Assessed Valuation,  Other

16.1.2. **Rents.** Rents based on  Rents Actually Received  Accrued. At Closing, Seller will transfer or credit to Buyer the security deposits for all Leases assigned to Buyer, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address.

16.1.3. **Other Prorations.** Water and sewer charges, propane, interest on continuing loan and

16.1.4. **Final Settlement.** Unless otherwise specified in Additional Provisions, these prorations are final.

16.2. **Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of  Buyer  Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller unless otherwise specified in Additional Provisions. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and Association Assessments are subject to change as provided in the Governing Documents.

17. **POSSESSION.** Possession of the Property and Inclusions will be delivered to Buyer on **Possession Date at Possession Time**, subject to the Leases as set forth in § 10.6.1.1.

If Seller, after Closing occurs, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer, notwithstanding § 20.2. (If Seller is in Default), for payment of \$ per day (or any part of a day notwithstanding § 3.3., Day) from **Possession Date and Possession Time** until possession is delivered.

## General Provisions

18. **CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

18.1. **Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

18.2. **Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase

Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

**18.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions, but such credit will not include relocation benefits or expenses or exceed the Purchase Price.

**18.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

**18.5. Home Warranty. [Intentionally Deleted]**

**18.6. Risk of Loss – Growing Crops.** The risk of loss for damage to growing crops by fire or other casualty will be borne by the party entitled to the growing crops as provided in § 2.8. and such party is entitled to such insurance proceeds or benefits for the growing crops.

**19. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller acknowledge that their respective broker has advised that this Contract has important legal consequences and has recommended: (1) legal examination of title; (2) consultation with legal and tax or other counsel before signing this Contract as this Contract may have important legal and tax implications; (3) to consult with their own attorney if Water Rights, Mineral Rights or Leased Items are included or excluded in the sale; and (4) to consult with legal counsel if there are other matters in this transaction for which legal counsel should be engaged and consulted. Such consultations must be done timely as this Contract has strict time limits, including deadlines, that must be complied with.

**20. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

**20.1. If Buyer is in Default:**

**20.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty, and the parties agree the amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

**20.1.2. Liquidated Damages, Applicable. This § 20.1.2. applies unless the box in § 20.1.1. is checked.** Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money amount specified in § 4.1. is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4. and 21), such amount is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

**20.2. If Seller is in Default:**

**20.2.1. Specific Performance, Damages or Both.** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, in addition to the per diem in § 17 (Possession) for failure of Seller to timely deliver possession of the Property after Closing occurs, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

**20.2.2. Seller's Failure to Perform.** In the event Seller fails to perform Seller's obligations under this Contract, to include, but not limited to, failure to timely disclose Association violations known by Seller,

1108 failure to perform any replacements or repairs required under this Contract or failure to timely disclose any  
1109 known adverse material facts, Seller remains liable for any such failures to perform under this Contract after  
1110 Closing. Buyer's rights to pursue the Seller for Seller's failure to perform under this Contract are reserved and  
1111 survive Closing.  
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1114 **21. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event  
1115 of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court  
1116 must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and  
1117 expenses.  
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1119 **22. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not  
1120 resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the  
1121 parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators  
1122 cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must  
1123 agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share  
1124 equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the  
1125 entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by  
1126 one party to the other at that party's last known address (physical or electronic as provided in § 26). Nothing  
1127 in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property,  
1128 before or after the date of written notice requesting mediation. This Section will not alter any date in this  
1129 Contract, unless otherwise agreed.  
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1132 **23. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must  
1133 release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller.  
1134 In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to  
1135 release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1)  
1136 wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a  
1137 court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable  
1138 attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless  
1139 Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller)  
1140 containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money  
1141 Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In  
1142 the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the  
1143 time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the  
1144 Court. The parties reaffirm the obligation of § 22 (Mediation). This Section will survive cancellation or  
1145 termination of this Contract.  
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1148 **24. TERMINATION.**

1149 **24.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to  
1150 Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to  
1151 Terminate), provided such written notice was received on or before the applicable deadline specified in this  
1152 Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the  
1153 Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right  
1154 to Terminate under such provision.  
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1156 **24.2. Effect of Termination.** In the event this Contract is terminated, and all Earnest Money received  
1157 hereunder is timely returned to Buyer, the parties are relieved of all obligations hereunder, subject to §§ 10.4.  
1158 and 21.  
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1161 **25. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and  
1162 specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any  
1163 prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this  
1164 Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or  
1165 enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by  
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its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a party receives the predecessor's benefits and obligations of this Contract.

## 26. NOTICE, DELIVERY AND CHOICE OF LAW.

**26.1. Physical Delivery and Notice.** Any document or notice to Buyer or Seller must be in writing, except as provided in § 26.2. and is effective when physically received by such party, any individual named in this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

**26.2. Electronic Notice.** As an alternative to physical delivery, any notice may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing, cancellation or Termination must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or .

**26.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

**26.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

**27. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 26 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

**28. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey; and Property Disclosure, Inspection, Indemnity, Insurability Due Diligence and Source of Water.**

## ADDITIONAL PROVISIONS AND ATTACHMENTS

**29. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

**Any offer received shall be subject to the following:**

**1. Right of First Refusal by Ute Water Conservancy District pursuant to that Amended and Restated Agreement for Domestic Water Service between Ute Water and the City of Fruita dated June 20, 2023**

**2. All remaining obligations to deliver water to Ronald Tipping pursuant to that Agreement between the City of Fruita and Ronald E. Tipping, Ronald C. Power and William R. Patterson dated January 3, 2014\*\*\* The remaining balance that is owed of \$145,393.36 is being waived . The offer amount is \$500,000 + \$145,393.36 for a total \$645,393.36**

**3. State of Colorado Dam Inspector Rules and Regulations Colorado Department Dam Safety Rules and Regulations for Dam Safety and Dam Construction, Effective Date: January 1, 2020, 2-CCR 402-1.**

**4. Muhr Contract For Delivery Of Untreated Water**

**5. Any contract/sale would be subject to approval by City Council through the ordinance**



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process.  
6. Ronald E. Tipping, Stan Muhr and Rodney C. Power are willing to permit public access to Enoch Lake on a limited basis. Government agencies such as Colorado Parks & Wildlife, Mesa County, City of Fruita may be able to reserve Enoch but must provide adequate insurance protection for the liability exposure including coverage for the above named purchasers/buyers and their entities.


An Amendment will be created to outline dates for Earnest Money, Title Work and Inspection and Closing ,once City of Fruita has received written notice that Ute Water Conservancy District has waived their First Right of Refusal.

**30. OTHER DOCUMENTS.**


**30.1. Documents Part of Contract.** The following documents are a part of this Contract:

**30.2. Documents Not Part of Contract.** The following documents have been provided but are not a part of this Contract:

**Signatures**

  
Date: 11/8/23  
Buyer: **Stan Muhr**

  
Date: 11/8/2023  
Buyer: **Rodney C Power**

  
Date: 11/8/2023  
Buyer: **Ronald E Tipping**

**[NOTE: If this offer is being countered or rejected, do not sign this document.]**

\_\_\_\_\_  
Date: \_\_\_\_\_

Seller: **City of Fruita**  
 By: **Mike Bennett, City Manager**

**END OF CONTRACT TO BUY AND SELL REAL ESTATE**

**BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

**A. Broker Working With Buyer**

Broker  Does  **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a  **Buyer's Agent**  **Transaction-Broker** in this transaction.

**Customer.** Broker has no brokerage relationship with Buyer. See § B for Broker's brokerage relationship with Seller.

Brokerage Firm's compensation or commission is to be paid by  **Listing Brokerage Firm**  **Buyer**  
 **Other** .

This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be entered into separately and apart from this provision.

Brokerage Firm's Name: **Chesnick Realty, LLC**

Brokerage Firm's License #: **EC100010148**



Date: **11/3/2023**

Broker's Name: **Lori Chesnick**

Broker's License #: **ER1320802**

Address: **137 N Peach St Fruita, CO 81521**

Ph: **970-858-8238** Fax: **970-858-8266** Email Address: **lori@chesnickrealtyllc.com**

**B. Broker Working with Seller**

Broker  Does  **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if

1341 Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not  
1342 already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest  
1343 Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of  
1344 Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written  
1345 mutual instructions, provided the Earnest Money check has cleared.  
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1348 Broker is working with Seller as a  Seller's Agent  Transaction-Broker in this transaction.  
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1350  Customer. Broker has no brokerage relationship with Seller. See § A for Broker's brokerage relationship  
1351 with Buyer.  
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1353 Brokerage Firm's compensation or commission is to be paid by  Seller  Buyer  Other .  
1354

1355 This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does  
1356 NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be  
1357 entered into separately and apart from this provision.  
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1362 Brokerage Firm's Name: **Chesnick Realty, LLC**  
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1364 Brokerage Firm's License #: **EC100010148**  
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1366 Broker:

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1369 Date: **11/3/2023**  
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1371 Broker's License #: **ER1320802**  
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1373 Address: **137 N Peach St Fruita, CO 81521**  
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1375 Ph: **970-858-8238** Fax: **970-858-8266** Email Address: **lori@chesnickrealtyllc.com**  
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1377 **CBS4-6-21. CONTRACT TO BUY AND SELL REAL ESTATE (LAND)**  
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1379 CTM eContracts - ©2022 MRI Software LLC - All Rights Reserved

Ronald E. Tipping, Stan Muhr  
and Rodney C. Power are willing  
to permit public access to  
Enoch Lake on a Limited basis.  
Government agencies such as  
Colorado Parks & Wildlife, Mesa  
County, City of Fruita may be  
able to reserve Enoch but  
must provide adequate  
insurance protection for the  
liability exposure including  
coverage for the above  
named purchasers and their  
entites

## Overview of Offer from Muhr, Power & Tipping and Estimated Net Proceeds

Offer amount \$500,000 +forgiving/waiving \$145,393.36 that is owed to City of Fruita total: \$645,393.36.

Real Estate commission is calculated based on \$500,000.00. Per listing agreement commission would be 2.25% (buyer, as a customer, had me write the offer) Since this is basically the same offer that was submitted prior to my office listing the property for sale, total commission to be paid to Chesnick Realty, LLC will be \$5,000.00.

Buyers have included a provision in Section 29. Additional Provisions. That will permit public access to Enoch Lake on a limited basis.







# FRUITA

## COLORADO

## AGENDA ITEM COVER SHEET

**TO:** Fruita City Council and Mayor

**FROM:** Kimberly Bullen, Public Works Director

**DATE:** NOVEMBER 13, 2023

**AGENDA TEXT:** BRIEFING ON NRCS PIFR AND DAM BREACH RFP - Briefing on NRCS Preliminary Investigative Feasibility Report and Summary of proposals received for engineering and construction services for dam breach at Fruita Reservoir #2

### BACKGROUND

In April of 2022 the City of Fruita requested Natural Resources Conservation Service (NRCS) Watershed Program planning assistance for a Watershed and Flood Protection Program (PL-566) project. This project was identified to protect the watershed and repair and enhance infrastructure at the city's Mountain Water properties including the repair of Fruita Reservoir #2 Dam to address dam safety issues that require it to be under a "No Fill" order by the Colorado Division of Water Resources. Other improvements included repairs to the Hay Press Diversion, piping of the Northeast Ditch and repairs to the Glade Park pipeline.

The city was awarded the grant to complete the Preliminary Investigative Feasibility Report (PIFR) and Jones & DeMille Engineering firm was selected by the NRCS to complete the PIFR for the East Creek Watershed. The work was completed in the spring of 2023 and the PIFR was finalized in October 2023.

The city was informed by email from the NRCS that the project will **not** be recommended for further planning as it did not meet all the requirements for the PL-566 program. A meeting is being scheduled to go over the findings in the report.

While waiting for the results of the PIFR, at the direction of City Council, Public Works staff prepared a Request for Proposals (RFP) for Engineering and Construction Services for Dam Breach at Reservoir #2. The RFP was posted on September 15, 2023 with a closing date of September 29, 2023. Interested firms were required to sign the Vendor Acknowledgement form acknowledging the two addendums as identified in Exhibit A.

The city received five proposals. Two firms were disqualified from consideration for not signing Exhibit A acknowledging Addendum #2. Those firms were the Applegate Group and J-U-B Engineering. The remaining three firms, Roaring Fork Engineering, SHE, and SGM were reviewed and evaluated on submittal compliance, narrative, project specific approach and methodology, qualification of firm and experience of proposed staff, project understanding, pricing, and timeline.

If City Council decides to move forward with breaching Fruita Reservoir #2 Dam, staff recommends the project be awarded to SGM based on their experience, knowledge of permitting and development of



dam removal plans and a comprehensive understanding of the Colorado Dam Safety Rules & Regulations and USFS Special Use Permit requirements. SGM's proposal was the most comprehensive, showing they fully understand the project and necessary requirements.

### **FISCAL IMPACT**

Public Works Director, Kimberly Bullen, Public Works Superintendent John Carrillo, and Dam Safety Engineer Jackie Blumberg reviewed the proposals. Below is the cost of each proposal submitted:

Roaring Fork Engineering - \$449,870  
 Applegate Group - \$24,700 (Disqualified)  
 SEH - \$145,841  
 J-U-B - \$28,000 (Disqualified)  
 SGM - \$164,710.70

### **APPLICABILITY TO CITY GOALS AND OBJECTIVE**

The City of Fruita's primary goal is to provide necessary core services to residents and businesses within the city limits. As a municipal organization, the city is focused on aligning resources, time, and talent to provide high-quality services while impacting and increasing the quality of place, economic health, and lifestyle of the Fruita community.

The city has not been successful in finding grant funding to help with the cost of repairing Reservoir #2 dam. This reservoir is under a "no-fill" order from the State, since 2016, as the dam does not meet the State's dam safety standards. This reservoir has inadvertently filled twice since 2016 due to snow melt requiring staff to make daily trips to the reservoir to ensure the siphon is drawing water levels down, take readings, and make observations to report back to the State of Colorado Dam Safety Division. Evaluating and determining future steps with the City's mountain properties and water rights is detailed in the City's Strategic Plan.

### **OPTIONS AVAILABLE TO THE COUNCIL**

This item is for information purposes and to obtain feedback and comments as it relates to proceeding with breaching Fruita Reservoir #2 dam.



## AGENDA ITEM COVER SHEET

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**TO:** Mayor and City Council

**FROM:** City Manager Mike Bennett

**DATE:** November 13, 2023

**AGENDA TEXT:** Fruita Mountain Properties Resolution

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### BACKGROUND

At the September 19, 2023, City Council meeting, the Fruita City Council directed the City Manager to draft a resolution to provide public clarity on the history, challenges, and why the City Council desires to divest the City's interest in owning and maintaining the Fruita Mountain Properties.

Attached is a draft resolution for review and possible approval.

### FISCAL IMPACT

There is no fiscal impact to approving this resolution.

### APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City has wrestled for 40 years on what to do with the Fruita Mountain Properties since no longer being able to use or needing to use the water for domestic water use in the city limits.

### OPTIONS AVAILABLE TO THE COUNCIL

1. Approve the Resolution as proposed.
2. Amend the draft Resolution and approve.
3. Provide feedback to staff to amend the proposed Resolution and set a date to place the new draft Resolution on a future City Council agenda to approve.

### RECOMMENDATION

Approve the Resolution.

**RESOLUTION 2023-34**

**A RESOLUTION DIVESTING THE CITY OF FRUITA FROM OWNING, MAINTAINING AND MANAGING ALL CITY OF FRUITA MOUNTAIN PROPERTIES**

**WHEREAS**, The City of Fruita owns four reservoirs and dams, including water rights decreed thereto, on the Pinon Mesa near Glade Park, Colorado commonly, referred to as Enoch's Lake, Fruita Reservoir #1, Fruita Reservoir #2, and Fruita Reservoir #3, and springs and pipelines appurtenant thereto, as well as a 125-acre parcel of vacant land (hereinafter “Fruita Mountain Properties”); and

**WHEREAS**, The Fruita Mountain Properties were originally acquired for the purpose of supplying domestic drinking water to the City of Fruita via a hand-built wooden pipeline through the Colorado National Monument, which pipeline no longer exists; and

**WHEREAS**, In 1983, the City of Fruita contracted with Ute Water Conservancy District for domestic water service for the City because the water owned by the City on Pinon Mesa was no longer sufficient and could not be delivered to provide for the City’s growing population which was approximately 3,668 at the time, the pipeline from Pinon Mesa could no longer be maintained through the Colorado National Monument, and there was no other way to deliver the water; and

**WHEREAS**, The City of Fruita provides free irrigation water from its Pinon Mesa water rights to over 50 households in Glade Park as part of the Glade Park Pipeline Water Users Association (GPPWUA) via an agreement that can be terminated by the City; and

**WHEREAS**, Enoch’s Lake is surrounded by private property and Fruita Reservoirs #1, #2, and #3 are surrounded by and located upon U.S. Forest Service land; and

**WHEREAS**, [www.fruita.org/mountainproperties](http://www.fruita.org/mountainproperties) provides current updates and historical information, including expenses, challenges, historical timeline, and details regarding the Fruita Mountain Properties; and

**WHEREAS**, The City of Fruita has faced many challenges and costs managing these resources located approximately 36 miles outside of the city limits and thus limiting resources that could otherwise be used in Fruita city limits; and

**WHEREAS**, The City of Fruita’s primary goal is to provide necessary core services to residents and businesses in the city limits. As an organization, the city is focused on aligning resources, time, and talent to provide the highest quality services while positively impacting and increasing the quality of place, economic health, and lifestyle of the Fruita community; and

**WHEREAS**, For well over a decade, staff has engaged with local, State, and Federal land agencies and none have been willing to own or maintain the Fruita Mountain Properties; and

**WHEREAS**, The challenges with these Fruita Mountain Properties includes managing significant hazards and jurisdictional dams, a “No Fill Order” by the State of Colorado Division

of Water Resources on Fruita Reservoir #2, illegal camping, trespassing, theft, vandalism, and other damages to private property, fires outside fire pits and left unattended, illegal fireworks, discharging firearms, discarding trash on private and public property, using private property to discard human fecal waste, and numerous calls to law enforcement over the years, which led to day use only restrictions; and

**WHEREAS**, Such challenges, specifically at Enoch’s Lake, led to the City restricting overnight camping and designating Enoch’s Lake as a day-use only recreation, the City to more thoroughly engaging with the Glade Park community and public lands agencies (US Forest Service, Colorado Parks and Wildlife, and Bureau of Land Management), the City holding a community open house in 2017, the City educating residents via articles in the City’s newsletter sent to all residents, and to the City holding public meetings to discuss the challenges surrounding the Fruita Mountain Properties; and

**WHEREAS**, The City of Fruita contracted with Arnie Butler & Associates in 2023 to conduct an appraisal of Enoch Lake, which resulted in a value of \$425,000; and

**WHEREAS**, The Fruita City Council directed staff to complete request for proposals for breaching Fruita Reservoir #2 and to compare such costs with the costs of repairing its dam to satisfy the state of Colorado’s “No-Fill” order; and

**WHEREAS**, In 2022, the City qualified for a Natural Resource Conservation Service (NRCS) for a preliminary investigative feasibility report (PIFR) for the East Creek watershed of the Fruita Mountain Properties, which provides options and estimates as follows: \$2.5 million to repair Reservoir #2 dam, \$4 million to repair Reservoir #2 dam and the pipeline infrastructure, and \$1.3 million to breach and decommission Reservoir #2.

**WHEREAS**, Due to the challenges, cost, amount of staff-time, resources pulled away from work within city limits, and future liability of costs to maintain jurisdictional dams, the City of Fruita is seeking to divest its interest in the Fruita Mountain Properties by selling or donating these properties to another entity allowing the City of Fruita to focus on core services within Fruita city limits; and

**WHEREAS**, The City prefers the Fruita Mountain Properties remain open to the public; however, the City recognizes the City should no longer be the entity to own, maintain, and manage the properties; and

**WHEREAS**, The City received an unsolicited offer from surrounding property owners adjacent to Enoch’s Lake to purchase the reservoir and surrounding land for a value of \$500,000 plus the satisfaction of \$140,000 non-monetary performance obligation arising from dam repairs the City currently owes Mr. Ron Tipping for labor and materials in connection with repair work Mr. Tipping completed in 2007, on Enoch Lake and Fruita Reservoir #1, and as outlined in the City’s Charter followed the ordinance process to consider the sale or conveyance of real property; and

**WHEREAS**, Through the public process, originally noticed June 16, 2023, with a first reading at the June 20, 2023, City Council meeting, and a second reading and public hearing held at the July 18, 2023, City Council meeting and continued to the August 29, 2023, City Council

meeting, the Fruita City Council denied Ordinance 2023-07 regarding the sale of Enoch Lake to further develop a process to take offers for the purchase of Enoch’s Lake prior to going into ordinance process; and

**WHEREAS**, The Fruita City Council established a process at the September 19, 2023, City Council meeting to list Enoch Lake for sale through its realtor, Lori Chesnick, and accept offers through November 8, 2023, at 5pm, to be reviewed by City Council its November 13, 2023, meeting; and

**WHEREAS**, The Fruita City Council directed staff at its September 19, 2023 City Council meeting to continue working with the Ute Water Conservancy District, US Forest Service, Colorado Parks and Wildlife, Bureau of Land Management, Mesa County, and all other potential partners to seek solutions for Fruita Reservoirs 1, 2, and 3, and the 125-acre parcel of land, specifically to make formal offers of free donation in order of Ute Water Conservancy District, Mesa County, US Forest Service, and Colorado Parks and Wildlife

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:**

**THE FRUITA CITY COUNCIL SEEKS TO DIVEST THE CITY OF FRUITA FROM OWNING, MAINTAINING, AND MANAGING ALL CITY OF FRUITA MOUNTAIN PROPERTIES, INCLUDING WATER RIGHTS, BY FOLLOWING THE STEPS OUTLINED ABOVE AND IF THE PUBLIC ENTITIES DECLINE THE OFFERS OF DONATION, THE CITY WILL PROCEED WITH LISTING THE PROPERTIES AND WATER RIGHTS FOR SALE FOLLOWING THE SAME PROCESS AS IT DID WITH ENOCH LAKE.**

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL  
THIS 13th DAY OF NOVEMBER, 2023**

ATTEST:

CITY OF FRUITA

\_\_\_\_\_  
Margaret Sell, City Clerk

\_\_\_\_\_  
Joel Kincaid, Mayor