



FRUITA COLORADO

CITY COUNCIL REGULAR MEETING

Fruita Civic Center

Tuesday, February 06, 2024 at 7:00 PM

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. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE**
- 3. AGENDA - ADOPT/AMEND**
- 4. PROCLAMATIONS AND PRESENTATIONS**

A. PRESENTATION – Fruita Teachers and Students of the Month for February 2024: Fruita Middle School

B. PRESENTATION – Recognizing the Family Health West Wellness Department for their participation in the Adopt a Street/Trail Program

- 5. PUBLIC PARTICIPATION**

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.

- 6. CONSENT AGENDA**

These are items where all conditions or requirements have been agreed to or met prior to the time they come before the Council for final action. These items will be approved by a single motion of the Council. Members of the Council may ask that an item be removed from the consent section and fully discussed. All items not removed from the consent section will then be approved. A member of the Council may vote no on specific items without asking that they be removed from the consent section for full discussion. Any item that is removed from the consent agenda will be placed at the end of the regular agenda.

A. MINUTES - A request to approve the November 7, 2023 Regular City Council meeting

- B. MINUTES - A request to approve the minutes of the November 13, 2023 Special City Council meeting
- C. BOARDS AND COMMISSIONS REAPPOINTMENT – A request to approve the reappointment of Yvonne Peterson to the Historic Preservation Board for another three-year term to expire in February of 2027
- D. ORDINANCE 2024-07, FIRST READING, An introduction of an Ordinance amending the official zoning map of the City of Fruita by zoning approximately 5.07 acres of property located at 614 Raptor Road to a Planned Unit Development zone for public hearing on March 5, 2024 (*Geode Flats PUD*)

7. ACKNOWLEDGMENT OF NEWLY APPOINTED/REAPPOINTED BOARDS AND COMMISSIONS MEMBERS

8. PUBLIC HEARINGS

Public hearings are held to obtain input from the public on various items. Public hearings are either Legislative in nature or Quasi-Judicial in nature. Public Input is limited to 3 minutes per person. People speaking should step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made. Each is described as follows:

LEGISLATIVE – Legislative public hearings are held when the City Council is considering an item that establishes legislation such as an ordinance amending or establishing laws of the city. Interactions by members of the public with the City Council or individual members is permissible on items of a legislative nature.

ORDINANCES - After introduction of an Ordinance (First Reading), a public hearing date is set and notice of the hearing is published in the newspaper. Staff presents the ordinance on Second Reading and the hearing is opened to the public for public input. After comments from the public, the Mayor will close the hearing and bring the Ordinance back to the City Council for discussion and potential action. The Council will make a motion to approve the Ordinance or take no action. In the event the ordinance is approved, it will become effective 30 days after adoption.

QUASI-JUDICIAL – Quasi-judicial public hearings are held when the City Council is acting in a judicial or judge like manner and a person with a legitimate interest is entitled to an impartial decision made on the basis of information presented and laws in effect. Quasi-judicial hearings are commonly held for land use hearings and liquor license hearings. Since the City Council is acting in a fair and impartial manner, it is NOT permissible for City Council members to have any ex-parte communication (contact between the applicant, members of the public, or among other members of the City Council) outside of the Public Hearings and meetings on the subject application. The City Council must limit its consideration to matters which are placed into evidence and are part of the public record. Quasi-judicial hearings are held in the following manner:

1. Staff presentation - Staff will present the comments and reports received from review agencies and offer a recommendation.
2. Applicant Presentation - The petitioner is asked to present the proposal. Presentations should be brief and to the point and cover all of the main points of the project.
3. Public Input (limit of 3 minutes per person) Speakers must step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made.
4. The public hearing is closed to public comments.
5. Questions from the Council. After a Council member is recognized by the Mayor, they may ask questions of the staff, the applicant, or the public.
6. Make a motion. A member of the City Council will make a motion on the issue.
7. Discussion on the motion. The City Council may discuss the motion.
8. Vote. The City Council will then vote on the motion.

A. QUASI-JUDICIAL HEARINGS

- 1) SPECIAL EVENT LIQUOR PERMIT APPLICATION – A request to approve an application from the Fruita Arts and Culture Board to serve wine at the Coco Vino Fundraiser to be held on Friday, March 15, 2024 from 3:00 to 10:00 p.m. at Our Lady of Perpetual Motion located at 503 E. Aspen Ave. - *Deputy City Clerk Deb Woods*
- 2) ORDINANCE 2024-06 - SECOND READING - An Ordinance amending the Official Zoning Map of the City of Fruita by zoning approximately 14.52 acres of property located 1873 K Road to a Community Residential zone (**1873 K Road Rezone**) - *City Planner Henry Hemphill*

B. LEGISLATIVE HEARINGS

- 1) RESOLUTION 2024-03 – PUBLIC HEARING – A Request to Approve an Amendment to the 2024 Annual Budget with Supplemental Appropriations of Funds For Completion Of Capital Projects at the Fruita Community Center Initially Budgeted for in the 2023 Annual Budget, and a Supplemental Appropriation of Funds for the Maple Street Bridge Project - *Shannon Vassen, Assistant City Manager*

8. ADMINISTRATIVE AGENDA

A. Public Safety Update – *Chief of Police Dave Krouse*

B. ORDINANCE 2024-08 - First Reading - Introduction of an Ordinance authorizing the City Manager to execute a contract with Farm, LLC for its purchase of City property known as 169 S. Mulberry Street, Fruita, Colorado and to execute all documents to perfect the sale and conveyance of the same for public hearing on March 5, 2024 - *City Attorney Mary Elizabeth Gieger & Special Counsel Kim Crawford*

RESOLUTION 2024-04 - A Resolution of the City Council of the City of Fruita, Colorado authorizing the City Manager to execute a contract to buy and sell real estate with Farm LLC for 169 S. Mulberry Street - *City Attorney Mary Elizabeth Gieger & Special Counsel Kim Crawford*

9. CITY MANAGER'S REPORT

10. COUNCIL REPORTS AND ACTIONS

A. ELECTION COMMISSION APPOINTMENTS – A request to ratify the appointment of Emma-Leigh Larsen and Stephen Ryken to the Election Commission

B. Council Reports and Actions

11. 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: DEBRA WOODS, DEPUTY CITY CLERK

DATE: FEBRUARY 6, 2024

AGENDA TEXT: PRESENTATION – Fruita Teachers and Students of the Month for February 2024:
Fruita Middle School

BACKGROUND

At the direction of the Fruita City Council, the City of Fruita began recognizing students and teachers in Fruita's schools as "Students of the Month" or "Teachers of the Month" at the first City Council meeting of the month beginning in February of 2019. The students and teachers are chosen by the Principal of each of the schools as being those that represented their school's core values during the previous month.

For the month of February 2024, Principal Jeremiah Johnston selected these Fruita Middle School students:

- Kenzie Ipson, 7th Grade
- Emerson Schaneman, 6th Grade

Principal Johnston stated that he selected these Fruita Middle School teachers to be recognized:

- Derek Hurshman, Elective Teacher
- Marie Caris, 7th Grade Teacher
- Laura Andersen, 6th Grade Teacher
- Allison Veale, Special Education Teacher

Mayor Kincaid will present each of the students and teachers with a certificate, day pass to the Fruita Community Center and an I-Heart-Fruita button.

No action from the Council is necessary.

***CITY OF FRUITA'S STUDENT OF THE MONTH
FOR FEBRUARY 2024***

This Certifies That

Kinzie Ipson

Of

7th Grade, Fruita Middle School

Is being recognized by The Fruita City Council for outstanding
academic achievement and excellence.

Keep up the great work!

February 6, 2024

Joel Kincaid, Mayor

***CITY OF FRUITA'S STUDENT OF THE MONTH
FOR FEBRUARY 2024***

This Certifies That
Emerson Schaneman

Of
6th Grade, Fruita Middle School

Is being recognized by The Fruita City Council for outstanding
academic achievement and excellence.

Keep up the great work!

February 6, 2024

Joel Kincaid, Mayor

CITY OF FRUITA'S TEACHER OF THE MONTH
FEBRUARY 2024

This certificate is presented to:

Marie Caris

7th Grade Teacher, Fruita Middle School

In recognition of your dedication, passion and hard
work. Thanks for all you do!

February 6, 2024

Joel Kincaid, Mayor

CITY OF FRUITA'S TEACHER OF THE MONTH
FEBRUARY 2024

This certificate is presented to:

Laura Andersen

6th Grade Teacher, Fruita Middle School

In recognition of your dedication, passion and hard
work. Thanks for all you do!

February 6, 2024

Joel Kincaid, Mayor

CITY OF FRUITA'S TEACHER OF THE MONTH
FEBRUARY 2024

This certificate is presented to:

Derek Hurshman

Elective Teacher, Fruita Middle School

**In recognition of your dedication, passion and hard
work. Thanks for all you do!**

February 6, 2024

Joel Kincaid, Mayor

CITY OF FRUITA'S TEACHER OF THE MONTH
FEBRUARY 2024

This certificate is presented to:

Allison Veale

Special Education Teacher, Fruita Middle School

In recognition of your dedication, passion and hard
work. Thanks for all you do!

February 6, 2024

Joel Kincaid, Mayor



AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: SHANNON VASSEN, ASSISTANT CITY MANAGER

DATE: FEBRUARY 6, 2024

AGENDA TEXT: PRESENTATION – Recognizing the Family Health West Wellness Department for their participation in the Adopt a Street/Trail Program.

BACKGROUND

In May of 2022, the City Council, after a recommendation from the Livability Commission, formally created the Fruita Adopt a Street/Trail program. The program allows local families, businesses, and community groups the ability to perform a valuable community service by adopting a section of Fruita street or trail to keep clear of litter and debris. These groups are recognized by the Fruita City Council after completing at least one year of service and also receive a road sign acknowledging their efforts along the route that is adopted. Since creating the program, six routes have been adopted by Fruita residents.

The Wellness Department at Family Health West was the first group to volunteer for the program and adopted Ottley Avenue between Coulson Avenue and Maple Street. Since adopting this route, staff at Family Health West have completed over 10 clean ups.

The certificates for each person that has participated in the program are attached with this cover sheet, and the following members will be in attendance for the meeting to accept this recognition on behalf of the Family Health West Wellness Department:

- Kara Griffith
- Diane Dill
- Layla stone
- Lori and Mickey Randall
- Stuart Chamovitz
- Annette DiBenedetto
- Teresa Gonzalez
- Ana Reitz

More information on the City of Fruita's Adopt a Street/Trail program can be found here: [Adopt a Street/Trail program.](#)



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Ana Reitz

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', positioned above a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Annette DiBenedetto

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', positioned above a solid horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Bill Cummins

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

**2023 Adopt a Trail
Program –
Family Health West**

A handwritten signature in brown ink, appearing to read 'Joel Kincaid', is written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Brandon Herring

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', positioned above a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Brandon Kiser

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Diane Dill

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', is written over a solid black horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Dirk Stelter

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in brown ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Eric Mello

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in black ink, reading "Joel Kincaid", positioned above a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Glacia Peck

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

**2023 Adopt a Trail
Program –
Family Health West**

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Jennie Ellis

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

**2023 Adopt a Trail
Program –
Family Health West**

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', is written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Julie Elliot

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Kara Griffith

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', is written over a solid black horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Layla Stone

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in brown ink, reading 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Lori Randall

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', is written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Lorraine Archuleta

**2023 Adopt a Trail
Program –
Family Health West**

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', is written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Lyndsey Olish

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

**2023 Adopt a Trail
Program –
Family Health West**

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', positioned above a solid horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Melissa Campbell

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', positioned above a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Melissa Kelley

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', positioned above a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Mickey Randall

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in black ink, appearing to read 'Joel Kincaid', is written over a solid black horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Schuyler Daugherty

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Stuart Chamovitz

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', is written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Tammy Harlow

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in black ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Teresa Gonzalez

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', positioned above a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

CERTIFICATE AWARDED TO:

Trish Douglas

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

**2023 Adopt a Trail
Program –
Family Health West**

A handwritten signature in black ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid



FRUITA
COLORADO

**2023 Adopt a Trail
Program –
Family Health West**

CERTIFICATE AWARDED TO:

Valerie Plantinga

For your dedication to the Fruita community
and your willingness to help keep Fruita clean
and beautiful.

A handwritten signature in dark ink, appearing to read 'Joel Kincaid', written over a horizontal line.

Fruita Mayor
Joel Kincaid

**FRUITA CITY COUNCIL MEETING
NOVEMBER 7, 2023
7:00 P.M.**

1. CALL TO ORDER AND ROLL CALL

Mayor Kincaid called the regular meeting of the Fruita City Council to order at 7:03 p.m. The meeting was held both in person and with virtual access provided through Zoom.

Present:

Mayor Joel Kincaid
Mayor Pro Tem Matthew Breman
City Councilor Jeannine Purser
City Councilor James Williams
City Councilor Ken Kreie
City Councilor Amy Miller
City Councilor Aaron Hancey

Excused Absent:

(None)

City staff present:

City Manager Mike Bennett
Assistant City Manager Shannon Vassen
Deputy City Clerk Deb Woods
Communications and Engagement Specialist Ciara DePinto
Human Resources Director Odette Brach
Parks and Recreation Director Marc Mancuso
Planning and Development Director Dan Caris
Public Works Director Kimberly Bullen
City Attorney Mary Elizabeth Geiger

Also present:

Staff and students from Shelledy Elementary School and their families
Members of the public (in-person and virtually)

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Mayor Kincaid called for a moment of silence for all faiths and beliefs to have the opportunity for a silent prayer. He then led in the Pledge of Allegiance.

3. AGENDA – ADOPT/AMEND

- **COUNCILOR KREIE MOVED TO ADOPT THE AGENDA AS PRESENTED. COUNCILOR BREMAN SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

4. PROCLAMATIONS AND PRESENTATIONS

- A. PRESENTATION – FRUITA TEACHERS/STUDENTS OF THE MONTH FOR NOVEMBER 2023: SHELLEDY ELEMENTARY SCHOOL**

Mayor Kincaid read the names of the students and teachers chosen by Principal Cami Kidd as the “Students of the Month” and “Teachers of the Month.” There was one student for each grade and three teachers who were nominated. Each student and teacher received a Certificate of Recognition, an “I-Heart-Fruita” pin and a day pass to the Fruita Community Center. Photos were taken of the students and school staff with the City Council.

B. PROCLAMATION – PROCLAIMING SATURDAY, NOVEMBER 11, 2023 AS VETERANS DAY IN THE CITY OF FRUITA TO BE ACCEPTED BY LOU BRACKETT ON BEHALF OF AMERICAN LEGION POST 2006

The Proclamation was read by Councilor Williams and accepted by Mr. Lou Brackett on behalf of American Legion Post 2006 and veterans in the community, state and nation. He noted that there would be a parade at 2:00 p.m. on Saturday, November 11th in Grand Junction as well as a ceremony at the Vietnam War Memorial on Friday, November 10th. Mr. Brackett invited all citizens (whether veteran or non-veteran) to attend and participate.

C. PROCLAMATION – PROCLAIMING NOVEMBER 15 – 21, 2023 AS “INTERFAITH AWARENESS WEEK” IN THE CITY OF FRUITA TO BE ACCEPTED BY GRAND VALLEY INTERFAITH NETWORK (GVIN) FORMER VICE-PRESIDENT CARLENE GOLDTHWAITE AND FORMER CHAIR REV. DR. CARLA RYAN

The Proclamation was read by Councilor Breman and accepted by former GVIN Vice-President Carlene Goldthwaite and former GVIN chairperson Rev. Dr. Carla Ryan. Ms. Goldthwaite announced that the annual ThanksGVIN event would be hosted by the Episcopal Church on the Redlands on Tuesday, November 21st and directed everyone to the GVIN website for more information.

D. PROCLAMATION – HONORING THE KING FAMILY AND THEIR SUNFLOWER FARM

The Proclamation was both written and read by Councilor Amy Miller. The King family was in attendance to accept the Proclamation.

5. PUBLIC PARTICIPATION

There were no comments from the public.

6. CONSENT AGENDA

- A. MINUTES - A REQUEST TO APPROVE THE MINUTES OF THE SEPTEMBER 5, 2023 REGULAR CITY COUNCIL MEETING**
- B. MINUTES - A REQUEST TO APPROVE THE MINUTES OF THE SEPTEMBER 29, 2023 SPECIAL CITY COUNCIL MEETING**
- C. MINUTES - A REQUEST TO APPROVE THE MINUTES OF THE SEPTEMBER 19, 2023 REGULAR CITY COUNCIL MEETING**

- D. MINUTES - A REQUEST TO APPROVE THE MINUTES OF THE SEPTEMBER 26, 2023 CITY COUNCIL WORKSHOP MEETING**
- E. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A RETAIL LIQUOR STORE – MALT, VINOUS AND SPIRITUOUS LIQUOR LICENSE FOR CTL FRUITA, LLC DBA CENTER TOWN LIQUORS LOCATED AT 161 N. PARK SQUARE, UNIT B**
- F. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF AN OPTIONAL PREMISES – MALT, VINOUS AND SPIRITUOUS LIQUOR LICENSE FOR ADOBE CREEK NATIONAL, LLC DBA ADOBE CREEK NATIONAL GOLF COURSE LOCATED AT 876 18 ½ ROAD**
- G. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A HOTEL AND RESTAURANT – MALT, VINOUS AND SPIRITUOUS LIQUOR LICENSE FOR MEZCALERA, LLC DBA EL MESCAL FAMILY MEXICAN RESTAURANT & BAR LOCATED AT 439 HIGHWAY 6 & 50**
- H. BOARDS AND COMMISSIONS REAPPOINTMENT – A REQUEST TO APPROVE THE REAPPOINTMENT OF JAMES JACKSON TO THE POLICE COMMISSION FOR ANOTHER THREE-YEAR TERM TO EXPIRE IN NOVEMBER OF 2026**
- I. ORDINANCE 2023-14 – FIRST READING – SUBMITTING TO THE REGISTERED ELECTORS VOTING IN THE REGULAR MUNICIPAL ELECTION TO BE HELD ON APRIL 2, 2024 A BALLOT ISSUE CONCERNING THE RETENTION OF REVENUE IN EXCESS OF TABOR LIMITS**
- J. RESOLUTION 2023-31 – APPROVING THE LEASE OF A ROOM LOCATED IN THE FRUITA CIVIC CENTER LOCATED AT 325 E. ASPEN AVE. TO MESA COUNTY FOR MOTOR VEHICLE REGISTRATIONS AND RELATED SERVICES**
- K. RESOLUTION 2023-32 – SUPPORTING AN APPLICATION TO THE COLORADO DEPARTMENT OF LOCAL AFFAIRS (DOLA) FOR THE CONSTRUCTION OF THE KINGSVIEW LIFT STATION PROJECT**
- L. MEMORANDUM OF UNDERSTANDING (MOU) – A REQUEST TO APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FRUITA AND THE ONE RIVERFRONT FOUNDATION**
- M. CITY MANAGER FORMAL EVALUATION SCHEDULE AND FORM – A REQUEST TO APPROVE A PROPOSED SCHEDULE FOR THE ANNUAL FORMAL EVALUATION OF THE CITY MANAGER AND A REQUEST TO APPROVE THE EVALUATION FORM**

Mayor Kincaid opened the public hearing on the Consent Agenda. Hearing no comments from the public, he directed it to the City Council.

- **COUNCILOR BREMAN MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

7. ACKNOWLEDGMENT OF NEWLY APPOINTED OR REAPPOINTED BOARDS AND COMMISSIONS MEMBERS

Mayor Kincaid acknowledged Jim Jackson (not present in the audience), who was reappointed to the Police Commission on the Consent Agenda.

8. PUBLIC HEARINGS

A. QUASI-JUDICIAL HEARINGS

1) ORDINANCE 2023-13 – SECOND READING – AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 131 ACRES OF PROPERTY LOCATED SOUTH OF SNOOKS BOTTOM AND WEST OF THE INTERSECTION OF KINGSVIEW ROAD AND HIGHWAY 340 TO A PLANNED UNIT DEVELOPMENT (PUD) ZONE AND APPROVAL OF A PRELIMINARY PUD PLAN (SUNSET POINTE PUD) – CITY PLANNER HENRY HEMPHILL

Before beginning his presentation, City Planner Henry Hemphill noted that hard copies of the Site Plan for the Sunset Pointe PUD were available for the public in the back of the room. He added for the record that staff had earlier in the day received additional written public comments that were similar and from the same property owner as those that were included in the Council packet and that he was providing hard copies of those to the City Council.

Mr. Hemphill also pointed out that the Ordinance zoning the subject property and the project's Preliminary Planned Unit Development (PUD) were combined into one presentation, although they would require separate decisions/motions by the City Council. He clarified even further that the Preliminary PUD Plan is an Exhibit to Ordinance 2023-13.

Mr. Hemphill explained the three steps in a Planned Unit Development (PUD) process consisting of 1) the Concept Plan, 2) Preliminary PUD Plan, and 3) Final PUD Plan and that the Preliminary PUD Plan is the only step that must go before the City Council for approval through the adoption of an Ordinance. The presentation also consisted of:

- Legal notice (of the public hearing) methods and dates
- Aerial photograph/map
- Application description/history
- Development Plan

Mr. Hemphill provided some history of the subject property as follows:

The Preliminary Development Plan was originally taken through a county process. It encompassed 260 total acres and was comprised of an overall density of one dwelling unit per acre under the county standards. The City of Fruita needed to annex the property and place it in a zone due to a failing private wastewater treatment plant that was constructed in accordance with the overall Development Plan for all of the Filings. Over a number of years, the City of Fruita exhausted every effort possible to try to extend sewer without costing the taxpayers extra money. The City received grant funds and saved up in the General Fund over a number of years and finally was able to get the sewer accomplished, although Fruita was including a county subdivision into the City. When that happened,

the City of Fruita adopted an Annexation Agreement that stated that the City was acknowledging the Preliminary Development Plan that was proposed and that the City would need to take any future land use applications before an elected, decision-making body. Any strict adherence to the Land Use Code could be exercised through the City's Land Use Code, but it was understood that Fruita was essentially inheriting a PUD zone through the annexation and zoning process.

The overall Site Plan consists of 132 total acres of residential development clustered over 54 acres (41% of site) and 64 acres are preserved as open space (48.8% of site). Primary access is proposed from Kingsview Road off Highway 340 near the Snooks Bottom intersection with a secondary emergency access including a utility easement. Pedestrian access is proposed through the disc golf course along the floodplain area by the river that connects to the lift station that serves the entire Kingsview area with sanitary sewer service. The lift station is sized adequately enough for the proposed development even though the City is slated to replace it or make improvements to it due to its age regardless of the proposed land use application.

The application was submitted with somewhat of an outdated Traffic Study from around 2007. The recommendations for turn lanes on Highway 340 going north and southbound have been installed, but Mr. Hemphill said it was important to note that traffic would be increased to accommodate the proposed built out subdivision at its total capacity (122 dwelling units).

Mr. Hemphill's presentation also consisted of:

- PUD deviations from the Fruita Land Use Code (supported by staff)
- Zoning criteria pursuant to Section 17.09.070 of the Fruita Land Use Code
- Code requirements for PUDs versus Subdivisions
- Review Agency comments (no major concerns, issues can be adequately resolved)
- Public comments were received and entered into the record
- Planning Commission and staff recommend approval subject to:
 - New Traffic Study recommendations must be met
 - Access Road to be built out of the floodplain area
 - Sidewalk from Hwy 340 to Snooks Bottom intersection
 - Allow Kingsview Estates HOA access to the emergency access area

Mr. Hemphill noted that there were some concerns voiced at the Planning Commission meeting that only the new subdivision would be allowed to have the keys to lockable bollards for the emergency access; the Kingsview Estates HOA also wants to have that same access.

Mayor Kincaid asked applicant John Moir to provide his presentation to the Council as the applicant's representative.

Mr. Moir, 278 N. Mesa Street, said he thought Mr. Hemphill gave most of the necessary details about his application and that he also reviewed all the documents in the Council packet provided by staff. He added that he hosted a neighborhood meeting, at which quite a few Kingsview Estates residents attended and voiced their concerns that were reiterated at the Planning Commission meeting. He said he does not take those lightly.

Mr. Moir said he thought the biggest concern is the safety of the intersection at Highway 340 and Kingsview Road, but he had agreed that if his application were approved by the City Council, he would obtain a new Traffic Study to see what it brings to light. He added that he had already

committed to improve the alignment of the intersection where there is a pretty substantial vertical drop in elevation. He stated that the design includes a clustering of the homes that follow the contours of the landscape and a substantial amount of open space with a trail network that goes all the way from Highway 340 by the lift station up to Kingsview Road and then from there all the way up to the BLM trailhead. He called it a benefit to all Fruita residents.

Mr. Moir mentioned that he has discussed with staff about whether he could implement a grey water system, which the State of Colorado has approved, but it would have to be monitored by the City. He said that he thought it would be a good idea because the area has no irrigation water, and if designed appropriately, it would provide a benefit to the residents as well.

Mayor Kincaid opened the public hearing.

Kathleen Morrison, 909 Prince Ct. in Kingsview Estates, said that when she talked to the Planning Commission, she reminded them of the experience in Paradise, California when 80 people died in their cars trying to get out of a wildfire and there was only one way in and one way out. She said the fear is still there in Kingsview Estates; they fear not being able to get out in time, even though Mr. Moir has proposed an emergency exit. Ms. Morrison said it was a problem because it's in the floodplain and if the "gate" is locked, people will have to wait until someone shows up to unlock it. She added that when she moved there 15 years ago, Snooks Bottom was basically a gravel pit with water in it and since then, the City has done an incredible job improving it so people can enjoy it. She noted that at that time, people parked their horse trailers in Devil's Canyon parking lot until it got so full that the BLM created a whole new parking lot for horse trailers, and that's how much traffic has increased. Ms. Morrison continued that the McGinnis Canyon recreation area is not just for Kingsview Estates residents; it's for the entire valley and probably beyond, and when she drives out and looks to her right where Highway 340 comes up, that's where everybody has to accelerate to get up the hill and it's the only way out. She concluded by saying that she knew the application was going to be approved, but requested that the Council accept the recommendations of the Planning Commission.

Michael Day, 1676 Fowler Dr., said he wanted to echo his neighbor's concerns about the emergency access. He stated that progress is inevitable, but when he bought his house eight years ago, he stood on his back porch and looked out at the open field and said to himself that if he was lucky, he's got 20 years to enjoy that view. Mr. Day continued that shortly after he moved in, the proposal was submitted to the City and it was much different than what he heard at the recent Planning Commission meeting. He stated that the development was going to happen to the west (not down below). Mr. Day said Fruita residents love their open spaces, the City's fireworks and the concerts in the park. He stated that if the development goes in as it is planned with the 120-ish houses, the City will no longer have its fireworks or music in the park; those will be the first two things to go away. Concerning the emergency access that Mr. Moir was proposing, Mr. Day stated that it was preposterous and absurd. He said if the Council wanted an example of just how dangerous it can be, this year was the first year that the City didn't close off access to Snooks Bottom for the fireworks show and the general public was able to go in there. He continued that he went to bed, but he was told it took those folks three hours to get out of there. Mr. Day said if 120 houses with an average of two cars were added to that, that would mean 240 cars on a daily basis that would be added to the general public that comes to Fruita to enjoy the fireworks, which will mean Snooks Bottom will quickly go away. Mr. Day asked that the Council require a new Traffic Survey as recommended by the Planning Commission and that the survey not be completed in the wintertime. He also asked the Council to cut the development in half.

Kathy Clifford, 1678 Fowler Dr., said that she used to have a career in fire protection in Reno when MGM had the tremendous fire and it was a horrible scene. She said she didn't care if everyone were on desert land; fire can still happen and it is really dangerous. Mrs. Clifford stated that she and Kathleen went to the fire department earlier in the day and they said that the proposed development meets the International Fire Code (IFC) requirements, but like Mr. Day had said, it does not take into consideration that with all the outlying areas that everyone has come to enjoy, the one road is not going to be adequate; that it is really dangerous and she is very scared for the children living in the area. She concluded that the development is not just going to affect people in the Kingsview Estates subdivision; it will affect all of the Council and everybody else. Ms. Clifford agreed that wonderful improvements have been made to the area, but that it isn't just the Kingsview Estates neighborhood; it's going to affect everyone. Mrs. Clifford said she didn't care that the Fire Department said the development meets the Codes because it isn't just about Codes; it's about the people and families that Fruita residents love and she urged the City Council to think deeply about the proposal.

Vera Mulder, 983 E. Pabor Ave., stated that she has lived in her house since 1986. She said she wondered if the "get to safety area" is going to go through the disc golf course and how safe that's going to be. She asked how a road could be built on rocky cliff and why the City is going to provide money for a rich developer to put his development in that he couldn't get approved for 20 years. Mrs. Mulder said that people from all over the valley have mentioned how they go to Opal Circle and Horsethief Canyon and she was reading the information in the Council packet about Mind Springs and how mental health issues are very important in the valley. She asked if the Council realizes what open spaces do for people who need to get their minds back to normal. She added that Fruita does not need developments encroaching on areas that are sacred for the human being such as Enoch's Lake. Mrs. Mulder stated that she has watched high schoolers zip through the area in Kingsview Estates and recalled a time two years ago when kids in a pickup were doing wheelies on the gravel road and the pickup got smashed and the kids had to be rescued. She asked what the Kingsview Estates residents are going to do with the increased traffic. Mrs. Mulder stated that development is wonderful when it's done right, but Fruita should not over-develop and she hoped the Council would take all those things into consideration. Mrs. Mulder concluded by saying that Fruita does not need the proposed development, period.

Mary Clawson, 926 Laura Ct., said her house backs up onto Kingsview Road. She thanked Mr. Moir and his company for trying to take into consideration everything that has been discussed as much as he possibly can. She also provided the following information she found online:

- The City of Fruita is internationally known as it's estimated that 726,000 visitors came to Fruita in 2017.
- Snooks Bottom is frequented in the area and consists of fishing, bird watching, swimming, Dog Park, Disc Golf Park, tournaments, cross-county races and competitions and there is parking, but there are always traffic issues.
- The BLM estimates over 300,000 visitors per year at McGinnis Canyons National Conservation Area. There, they do hiking, horseback riding, hunting, fishing, mountain biking and wildlife viewing.
- The Colorado National Monument estimates that 500,000 to 1 million visitors per year go on the Monument, which is right next door to Kingsview Estates.

Mrs. Clawson said she tried to contact the Colorado Department of Transportation (CDOT), the Lower Valley Fire Department, Fruita Public Works and the Bureau of Land Management (BLM) and she was unsuccessful. She said her point is that she is strongly against having only an emergency

exit and she is terrified (just as a previous resident had said) about what could happen. She said she has seen children walking along with their fishing poles down Kingsview Road, has seen car accidents happen, horse trailers and cars falling over the edge at Snooks Bottom, and this past Fourth of July, there was three hours' worth of traffic. Mrs. Clawson requested that the Council take into consideration the emergency exit as more than just a gated area.

Dave Karisny, 917 Squire Court, stated that his residence is in Filing 1, so when going into Kingsview Estates, they are on the first right. He offered the following history of the subdivision and surrounding area:

Bud Pearson was a retired biologist and the President of Kingsview Estates HOA in 1995. He worked with John Schneiger, who was the City Manager at that time. They had a sewer system that was not necessarily mechanically failing, but the developer (George Pavlakis) wasn't complying with state standards and he was trying to get out of being responsible. For about four years, it was a difficult task to get the residents to agree to pay approximately \$6,000 each and Mr. Karisny said the City of Fruita paid for the oversizing from an 8-inch pipe to a 10-inch pipe. The City received a partial grant and was able to secure a 3% loan. The City would send Kingsview Estates residents monthly statements that they paid down through a Recapture Agreement. Shortly after that, George Pavlakis initiated Filing 3 and the City allowed him to do so under Mesa County design standards. The agreement was that Mr. Pavlakis gave Snooks Bottom to the City of Fruita and he paid nearly half of what the cost was supposed to be to re-engineer Kingsview Road from Highway 340 to Fowler Drive. After that, the City pursued other parties to participate in implementing the improvements. Mr. Karisny said that when Kingsview Estates residents saw the proposed development submitted in 2006, the assumption was that Kingsview Road improvements would be completed including acceleration and deceleration lanes, a left turn lane and a road alignment with Rimrock Rodeo across the street.

Mr. Karisny stated that there are a number of drainage issues that affect that whole area as the elevation changes which creates sight-distance issues along Kingsview Road. He said the developer currently appearing before the Council is talking about doing part of that plan and CDOT has "sort of" done the acceleration and deceleration lanes under a constrained plan in 2016. He continued that at the Planning Commission, Mr. Moir agreed that maximum height would be 25 feet for all the homes in the proposed subdivision and is talking about doing something he calls "casitas," which he believes are Accessory Dwelling Units and Mr. Karisny said he believes they should appear on the Plat.

Mayor Kincaid stopped Mr. Karisny to explain that he had already given him more time than the three-minute limit for public comment and asked him to yield the floor.

Jeff T. Miller, 918 Crown Court, stated that in 2017, he and his wife chose to live in Kingsview Estates and that they were blessed to have the view and the opportunity to be near nature. He said they chose Fruita over the Eastern Slope because of the sprawl. Mr. Miller said he wanted to caution the Council and make it a win/win by maybe downsizing some of Mr. Moir's plans so that Fruita doesn't become the next Moab where the locals are complaining about success running them out. He said he thinks Fruita has that same concern coming around the corner and while everyone needs to think of growth, consideration needs to be given to manageable and thoughtful growth. Mr. Miller said he'd hate to see Moab or the Front Range come to Fruita and ruin what everyone has. He said he realizes progress is progress and he wasn't trying to prevent Mr. Moir from getting his investments going, but he just wanted the Council to look at the stress on Highway 340 Bridge at the river and

how close the emergency access and the intersection is to it. He added that there should also be some consideration for the students in the School District that come in on Highway 340 across the bridge because as it continues to grow, there will be stress on that. Mr. Miller said he wouldn't reiterate about all the stress on Kingsview Road. He said he asked at the Planning Commission meeting if a geological study had been done for the soils, erosions, and anthropological and archeological concerns. Mr. Miller asked the Council to consider a win/win and have some thought about his and the public's concerns.

Steve Vigil, 945 Prince Court, stated that he has a large parcel next to the Kingsview Estates Subdivision and Mr. Moir's proposed development. He said that all he has heard in both the Planning Commission meeting and this Council meeting has been nothing but negative comments about how people's lives are going to change as a result of the proposed development. He said for a developer to give up 40% of their land to accommodate a small subdivision like the one proposed is incredible and he wanted to commend Mr. Moir for it. Mr. Vigil continued he could only imagine the amount of tax that Mr. Moir has been paying on his parcel for years and that the parcel has only benefited the City of Fruita and the community. He pointed out that he and his wife pay incredible amounts just to have a 35-acre parcel, so he knows Mr. Moir is paying a lot. He added that the risk that developers and contractors take is incredible; many of them have gone broke and he just wanted to tell the general public to wake up because the going rate is \$300 per square foot. Mr. Vigil said the tax revenue will have a significant impact on Kingsview Road and that if it weren't for developers and builders, improvements like what Mr. Moir was proposing would not take place and for people to worry about the fire danger, right now there is no emergency access road, so it is worse right now than if the development happens. Mr. Vigil asked everyone to think about whether their glass was half-full or half-empty.

Pat O'Connor, 901 Crown Court, said he wasn't opposed to development either and that he's been a land development engineer for 45 years, so he has done a lot of what was being discussed himself. He said he does, however, expect development to conform with the guidelines established by the City Planners and Engineers and that his main concern is the same as most of his neighbors present at the meeting; it's a concern about traffic. He said he was glad to hear that an updated Traffic Study was being proposed because it is obviously needed and that it needs to account for the explosion in the public use of all of the trailheads back in McInnis Canyons and the increased use at Snooks Bottom. Mr. O'Connor said there are some days during the week where there aren't even any parking spaces in the parking lots at the trailheads, so people are parking on the streets and the access roads leading up to them. He pointed out that there is Snooks Bottom, Devil's Canyon, horse trailer parking, Fruita Paleo area, Pollock Canyon Trailhead and many other, smaller and lesser-known trailheads where people park and take off on hikes. He added that there is a Colorado Division of Wildlife farm and hunting facility there as well as another subdivision at the end of Horsethief Canyon Road with 20 or 25 lots, and he just wanted everybody to be aware of the potential there is now for an incredible amount of activity and traffic. Mr. O'Connor continued that he does not know of another development like the one being proposed in the entire valley where there are 85 or so lots like in Kingsview Estates plus 122 new proposed lots where everyone will be going in and out through one access point (Highway 340 and Kingsview Road). He said the outbound left turn lane complicates things as it's an outbound left turn where people have to cross both lanes of traffic. Mr. O'Connor said he wanted to talk about some of the City of Fruita design criteria and construction specifications such as Section 4.2 Street System Design Criteria, which says that local streets (which are the typical streets one would see in a subdivision) can handle 1,000 vehicles per day (1,000 ADT). He said that after that, a minor collector street is required, which is a wider pavement with sidewalks on both sides. Mr. O'Connor concluded his statement by saying that 122 new lots will produce an ADT by

itself of over 1,200 per year (which exceeds the criteria for a minor collector), and that it should go from Highway 340 all the way back to the end of the proposed subdivision.

Mayor Kincaid informed Mr. O'Connor that his time limit for speaking had expired, so Mr. O'Connor took his seat.

Hearing no further comments from the public, Mayor Kincaid closed the public hearing and referred the matter to the City Council.

Councilor Breman asked for clarification as to why the emergency access would be locked. City Engineer Sam Atkins said he doesn't believe it has to be locked; that it could be left unlocked except that a problem that could arise if motorized vehicles are running through during non-emergencies because the Fire Department would probably have something to say about that. He added that otherwise, it could be left unlocked.

There was a lengthy discussion about the Traffic Study. Councilor Purser wanted to know if the Traffic Study would take into consideration additional tourism and recreational traffic going into the subdivision or if it would address natural disasters such as a wildfire. Mr. Atkins responded that the Traffic Study Mr. Atkins is only going to take into consideration the quantity of traffic and the speed at which the roads are posted. He said turn lanes are based on volume, peak turning volume movements and speed at which the road is posted.

Councilor Purser asked if the Fire Department's position takes into account additional tourism and recreational traffic going into the subdivision. City Engineer Sam Atkins responded that the Fire Department is strictly concerned with the geometry of whether they can get the fire apparatus in the area and whether there's enough room to turn around in a cul-de-sac so that they are fully able to respond to an emergency. He added that Fire Marshal Travis Holder would have made comments if he felt the development created an unsafe situation.

Councilor Purser asked where the proper data is to help the Council make an informed decision on safety. City Planner Henry Hemphill responded that when a building permit is pulled, there is a requirement for proof of fire sprinklers in all the dwelling units and that sprinklers will make fire less likely to spread. He added that Ute Water and the Fire Department coordinate their project reviews and have stated that the fire flows are adequate.

Mayor Kincaid had to remind the audience members in the room that the public input portion of the public hearing was closed and respectfully asked them to refrain from making comments.

Councilor Purser said she was really interested in the idea of exit strategies for the existing and potential future residents from the area as it seemed like a very reasonable concern.

Planning and Development Director Dan Caris said he thought what Councilor Purser was asking for was something that could be subjected to a Filing Plan such as an Emergency Egress Plan on which the City could work with the Fire Department and instruct the residents. He said that was certainly something that could be explored as a condition of approval.

City Attorney Mary Elizabeth Geiger agreed and added that conditions had already been recommended by the Planning Commission and that more conditions could be added to the Preliminary PUD Plan application if the zoning Ordinance were to be passed.

Staff explained to the City Council that the reason they didn't have an updated Traffic Study before them was because it is logical to have the study done after the rezone because it indicates what traffic the City needs to factor in.

There was also a lengthy discussion concerning the proposed emergency access.

Councilor Miller said she thought it was important to note that if the property went through with a straight zone instead of a PUD, it would not look near as nice and the City would not be getting the improvements that were being proposed. She said she thought the plan was very well thought out and that she loves how the developer was leaving 64 acres of open space, which is 12.5 times the required amount. She added that she would hate to see that property get split up into parcels that have one massive home be built on them and the City losing all that open space. Councilor Miller also thought the egress plan idea was a good one.

Councilor Hancey thanked all the audience members who participated in the public hearing and assured them that the Council does take public comment into consideration. He asked what the next steps for the development would be. City Planner Henry Hemphill responded that the final step would occur after this public hearing if the development were to be approved; that the Fruita Land Use Code states that the Final Plan application shall be submitted within 180 days of the zoning and Preliminary PUD Plan decisions by City Council. The Final PUD Plan is again sent out for review to all the review agency partners including CDOT, Ute Water, Xcel Energy and the Lower Valley Fire Protection District. Those review comments are reviewed by City staff administratively to ensure that comments and conditions placed on the application from the review agency partners and the City Council have been adequately addressed without a significant redesign. Those decisions and future Filings are approved administratively.

Councilor Hancey asked Mr. Moir about what he was proposing for the open space. Mr. Moir responded that the open space would be dedicated to the City of Fruita, who could then do with it as they please. He said he would provide a trail through it that would also be dedicated to the City of Fruita.

Mr. Moir took this opportunity to address the concerns about access. He stated that one of his main concerns is also safety because the last thing a developer wants to do is to build a house that's not safe and doesn't meet the needs of the residents. He said this is why he has taken a hard look at the emergency access, and even though the Council may not feel that it is an adequate secondary access, right now, there is *no* secondary access apart from Kingsview Road. Mr. Moir stated that he has talked to the Fire Department about his proposal and they know they can get their emergency vehicles up through there. He added that he would bring the level of the road above the floodplain stage so it is an access that is usable. Mr. Moir said he wanted to reiterate that if there were pedestrians or bicyclists coming up into the area, this would be an access they could use rather than climbing all the way up Highway 340 to Kingsview Road. It serves as a trail that gets people up to the Colorado National Monument, so Mr. Moir called it an example of connectivity that the development would be providing to the City of Fruita and its residents and visitors.

Councilor Hancey asked Mr. Moir to reiterate the other road improvements on Kingsview Road that he was proposing. Mr. Moir explained that Traffic Studies look ahead 20 years, so the traffic being experienced today is probably pretty much where the Traffic Study had projected. He said CDOT made some improvements, but since 2005 (at the beginning of the project), he's been suggesting making an improvement to the geometry of Kingsview Road where it intersects with Highway 340.

Mr. Moir said the Traffic Study will likely show that and he knew the Planning Commission was concerned about pedestrian traffic from the bus stop back into Kingsview, so he needs to figure out how to make the connectivity.

Mr. Moir pointed out that the Engineer that has been working on the proposed development, Eric Slavone, was present in the audience. He said neither one of them knows right now what detail needs to be looked at to take the project to the next level, but Mr. Slavone has suggested that the sidewalk should probably go all the way down to Snooks Bottom since that is an accessibility issue that needs to be worked out.

Councilor Hancey asked the City Engineer what kind of recommendations might be included in the Traffic Study. Mr. Atkins responded that with an increase in overall traffic and in turning movements, there is storage that is added to some of the turn lanes, so they could actually lengthen in order to accommodate the turns coming out of the through lanes. He added that the pedestrian connection is definitely one of the things that's on the table and that would get the people who walk off of the shoulder of the existing Kingsview Road.

Councilor Hancey stated that there are many positive benefits in Mr. Moir's proposal including 64 acres of open space that would belong to the City and even with the challenges of the emergency access, it would mean getting an emergency access that currently doesn't exist and that would create safety in the area. He added that he understands the concerns residents have but that he feels most of those would be addressed appropriately through the administrative review process. He called Mr. Moir's proposal a good plan and a great product for the Fruita community.

Mayor Kincaid said that Fruita has been talking about updating Kingsview Road and the lift station for a long time. City Manager Mike Bennett noted that the lift station upgrade was included in the draft 2024 Budget. He asked Mr. Moir how long he has owned the property and has been invested in the Fruita community. Mr. Moir said he purchased the property in 2004 and started the development proposal on it within a couple years after that and withdrew the application in 2007 when development mostly stopped due to the economy.

Councilor Miller noted that Mr. Moir has brought Fruita some of the most affordable and lovely products and she thinks it is important to note the history of Mr. Moir's development in Fruita.

City Attorney Mary Elizabeth Geiger recommended that the motion for the zoning be amended to add as findings items #1 and #3 of the zoning criteria.

- **COUNCILOR PURSER MOVED TO ADOPT ORDINANCE 2023-13 – SECOND READING – AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 131 ACRES OF PROPERTY LOCATED SOUTH OF SNOOKS BOTTOM AND WEST OF THE INTERSECTION OF KINGSVIEW ROAD AND HIGHWAY 340 TO A PLANNED UNIT DEVELOPMENT ZONE KNOWN AS SUNSET POINTE PUD WITH THE ADDITION OF FINDINGS #1 AND #3 OF THE ZONING CRITERIA WITHIN THE BODY OF THE ORDINANCE. COUNCILOR KREIE SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES. COUNCILOR WILLIAMS VOTED NO.**

Councilor Purser stated that she was hoping that a motion to approve the Preliminary Planed Unit Development would include the addition of an egress plan and pedestrian connection as conditions of approval.

Planning and Development Director Dan Caris said that he wanted to set some expectations for the benefit of the members of the public in the room. He stated that if the Preliminary Plan were to be approved, the applicant would have to set up another pre-application meeting for a First Filing, or what would likely be 1.A and 1.B in the Filing Plan. The applicant will receive a checklist and Mr. Caris said it was staff's understanding that the Council wanted not only an Egress Plan, but also a Traffic Study for the entire Preliminary Plan and those weren't going to be parsed out for individual filings. He pointed out that this was important to include in the official record of the meeting.

Mr. Caris continued that the application will then be required to go to CDOT including a methodology for the Traffic Study that CDOT will have to agree to. Once it has been agreed upon, the Traffic Study will begin. With the submittal document, there will be a Geotech and Soils Study. There will be an investigation that will have pavement recommendations based off the boring samples and foundation recommendations.

Mr. Caris stated that all of the specific filings will go sequentially as the subdivision gets built out. He added that the level of detail that will be submitted will be immense and the property owners still living in the area will be sent a notice, although it will be an administrative process at that time and not a public hearing process. Mr. Caris said the hope is that applicants will be able to see that level of detail on the City's website with the application, which hopefully will quell some of the concerns that had been expressed.

Councilor Kreie asked if there would be an opportunity to make comments to staff administratively. Mr. Caris responded in the affirmative and added that an applicant might not have access to a public hearing process, but that they still have due process.

- **COUNCILOR KREIE MOVED TO APPROVE THE SUNSET POINTE PRELIMINARY PUD PLAN WITH THE CONDITION THAT ALL REVIEW COMMENTS ARE RESOLVED WITH THE FINAL PUD PLAN APPLICATION, THAT AN EMERGENCY ACCESS AND EGRESS PLAN IS DEVELOPED, THERE BE PEDESTRIAN CONNECTIVITY FROM HIGHWAY 340 TO SNOOKS BOTTOM AND THAT A TRAFFIC STUDY BE CONDUCTED. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

Mayor Kincaid called for a five-minute break at 9:10 p.m. The meeting reconvened at 9:15 p.m.

B. LEGISLATIVE HEARINGS

There were no Legislative Hearings on the agenda.

9. ADMINISTRATIVE AGENDA

- A. 2024 BUDGET PRESENTATION – QUALITY OF PLACE AND COMMUNITY WELLNESS AND PERSONNEL AND EMPLOYEE RETENTION – ASSISTANT CITY MANAGER SHANNON VASSEN**

Assistant City Manager Shannon Vassen provided the Council with staff's presentation of the following Chapters in the proposed 2024 Budget document:

- Quality of Place and Community Wellness
 - Parks and Recreation General Fund
 - Fruita Community Center Fund
 - Public Safety General Fund
- Employee Retention and Personnel
 - All Funds Summary
 - Transmittal Letter
 - All Funds

Councilor Breman inquired about whether staff had considered bringing in consulting firms that work specifically with municipalities to go over grants that have been used to see if there's any money left out on the table. Mr. Vassen responded that staff has talked about that pretty extensively, especially as some of the recent federal programs have come out as part of the Infrastructure Investment and Jobs Act (IIJA) and it is something that staff is definitely interested in. He added that the City of Fruita's Economic Development District is the Associated Governments of Northwestern Colorado (AGNC) and the State of Colorado has allocated \$100,000 to Economic Development Districts. AGNC subsequently hired a Grants Coordinator, and although Fruita City staff has not had a chance to work with him yet, Mr. Vassen said he looks forward to doing just that. He also added that staff has considered potentially setting aside some dollars to help with contracted grant writing but will also be trying themselves to find opportunities that may fit best for Fruita. City Manager Mike Bennett noted that Fruita has hired those type of firms in the past but doesn't have one lined up yet. He pointed out that some of them don't necessarily charge anything except for a percentage of the grant awards. He said it is something that comes up on a regular basis and right now, the trend is in grants because there are so many of them out there. Councilor Breman said he would be sending the City Manager an email of introduction to a group that does grant writing based on a percentage. Mr. Bennett said that'd be great.

Councilor Hancey asked why fines and assessments were nearly doubling or at least going up 30% to 40%. Mr. Vassen said Development Impact Fees are not technically revenues until they are used; they are deferred revenue, and under the categories of revenues, they are classified as "Fines, Assessments." He added that the City has been using Development Impact Fees for Capital Projects such as Reed Park, 19 Road and the railroad crossing.

Councilor Hancey said that aside from Intergovernmental revenues, there are certain revenue streams where the numbers look pretty flat. He asked what the long-term plan is regarding hiring administrative heads when the City has already done so much of that over the last couple of years. City Manager Mike Bennett stated that staff has been working on succession planning for quite some time. He pointed out that the current Finance Director position is one that is also the City Clerk, Purchasing Manager, Budget Manager (in the past) and Contract Manager. He commended Margaret Sell for taking all of those on over the course of her 42 years with the City, but added that in the last six to seven years, her position has become very reactive and not proactive in many of those areas. Mr. Bennett explained that with Mrs. Sell's retirement, staff has been making adjustments for a number of years not to just cover what staff is doing but also what staff is *not* doing and needs to be. He stated that Mr. Vassen's role is now to oversee the Administration Department and completely take over the Budget.

Mr. Bennett further explained that administrative positions and duties are being restructured so that new positions could potentially include Finance Manager and a separate position that handles purchasing/procurement and document retention and records management. He added that the City has not created any new administrative roles for many years because other positions like Maintenance Workers have been prioritized. He concluded that there shouldn't be an upcoming trend for many more administrative supervisory roles.

Councilor Hancey supposed that having a Purchasing/Procurement Specialist could save the City a lot of money. Mr. Vassen noted that the first time the City hired a Purchasing Specialist, Fruita brought in people from Grand Junction because they have a whole purchasing division where that is all they do. He agreed that this position could benefit the City of Fruita in the long run. Mr. Bennett added that a new Procurement Specialist could look into partnering with other governmental entities for lower cost pricing. He added that currently, the City's major purchasing group is the Engineering Department, who is barely keeping up with all the development review and Capital Projects because they also have to do their own purchasing in addition to constantly drafting Requests for Proposals (RFPs) and Request for Quotes (RFQs). Councilor Hancey said he would definitely support even more than a two-month overlap to fill some of the administrative positions in preparation for Mrs. Sell's retirement. Mr. Bennett added that Christa Yamashita has taken over quite a few of the financial responsibilities that were Mrs. Sell's plus she is working on grants with Fruita's Department Directors.

There was a discussion about including a line item in the Budget for long-term planning for facilities such as the Fruita Civic Center, which the City will outgrow. Mr. Vassen determined that the line item is already in the Budget under Public Works called "Space Needs Assessment."

The City Council did not make any changes to the draft Budget document other than those that had previously been given to staff.

10. CITY MANAGER'S REPORT

City Manager Mike Bennett stated that he had no updates as long as the Mayor planned to report on the District #51 School Board meeting.

11. COUNCIL REPORTS AND ACTIONS

A. ESTABLISHING A COMMITTEE TO REVIEW POSSIBLE "LOCALISM" BOARD

The Mayor and City Council determined that they were in favor of establishing a "Localism" Board as proposed by staff, as well as the appointment of all applicants who submitted an application to the Committee.

- **COUNCILOR HANCEY MOVED TO ESTABLISH A LOCALISM COMMITTEE AND APPOINT THE LISTED MEMBERS AS THE COMMITTEE THUSFAR. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

B. COUNCIL REPORTS AND ACTIONS**MAYOR JOEL KINCAID**

Joel said that some of the Council members had asked about the Joint meeting with Mesa County School District #51 and they (the School Board) have more or less made it apparent that there's not a possible way to have a whole meeting with the entire School Board and full City Council before they will be making decisions. He said a meeting had been scheduled for Thursday, November 9th for Mike, himself, Matthew, Brian Hill, Andrea Haitz and Clint Garcia (COO of the School District).

Mike explained that the School Board will be voting on the boundary changes that affect Fruita Monument High School on November 14th. He added that they have already received a recommendation at a previous School Board meeting from the Demographer to approve the boundary changes, which will move all students at Wingate and Appleton to Grand Junction High School. That means pretty much all the kids on the Redlands will phase out and not attend Fruita Monument High School anymore.

Joel asked the Council members what they wanted addressed at the meeting; noting that the boundary changes and grade reconfigurations were the main issues. Mike pointed out the School Board voted on the timing of the grade reconfigurations at the School District's December meeting to decide whether they would be implemented next year or the following year. Joel noted that Amy had brought concerns up before about buyers that purchased homes in certain areas in the valley because they want to go to Fruita Monument High School.

Amy said the thing she hears the most is that people choose Fruita because of its culture, not because of the school building and people keep getting told that they get to go to a new school building but they really don't care about that. She said she knows that FMHS's Principal is focusing really hard on trying to accommodate as many School of Choice students as he can and is anticipating an increase in those. She pointed out that there's only so much capacity with the grade reconfiguration. Mike added that the School District was hesitant to attend a joint meeting with the Fruita City Council because they did not have one with the City of Grand Junction before the changes at East Middle School, but he, Dan Caris, Matthew and Joel would be meeting with District staff and the Board Chair.

Mike asked the Council to keep in mind that a decision about the boundary changes still doesn't have to be all or nothing and if there was anything the Council wanted conveyed to them, to let him, Matthew and/or Joel know which they could convey in their upcoming meeting. Joel recalled that in the past, the City Council has written a letter to the School District that was signed by all Council members.

Jeannine said she has serious reservations about the communication from the School District on the entire issue. She recalled last spring when the surveys went out, they had a much better response from the public, but those surveys were concerning a whole different direction. Jeannine said that if the School District had sent another survey, it must've gone only to the parents of students when there are a lot of other opinions, community culture and insight for them to consider. She added that when the survey initially went out, it referenced the District not being able to reconfigure schools because of capacity unless there was a vote of the citizens. Jeannine said she just feels like the District's outreach was very poor and that decisions shouldn't be made on such a small number of respondents to the survey. She added that the boundary changes could be potentially devastating in a lot of ways.

She said she also wanted to know if the decisions would result in Fruita going down in Class because that would be very detrimental for Fruita's ability to compete in all things (not just sports). Jeannine also said the timing seems really odd and suspicious. She said she is in favor of Grand Junction getting the new high school, but now it feels like there is a push to fill it up for the purpose of the new school being "The School."

James said the problem is that there is nothing positive and good in it for Fruita and he wonders at what cost it may come.

Amy said she is hopeful that the District will take the approach that they did with the initial boundary change where kids that are already in Fruita schools would continue because they are grandfathered in.

Mike recalled when Fruita had a bond that failed that was going to include an expansion of FMHS and the City Council had a joint meeting with the School Board, who asked for and received support from the Fruita City Council on the Grand Junction High School bond. When they did that, they said that if that bond passes, they will come back for bonds for a FMHS expansion in the future, which would then help reconfigure the grades. He said as recent as the spring, the survey questions were more geared towards that. Mike said he thought the School District should be reminded of that by the Fruita City Council because it wasn't that long ago.

There was consensus of the Council to send a letter to the School District regarding their concerns. Mike requested assistance from Jeannine and Amy to draft the letter since they are aware of all the history.

COUNCILOR AARON HANCEY

Aaron asked if staff had talked to Dinosaur Journey about moving their camper trailers in the parking lot. Mike said Parks and Recreation Director Marc Mancuso keeps following up with them and they keep saying they are working on it.

COUNCILOR AMY MILLER

Amy said she wanted to go on record to say that she was very displeased with the vandalism that occurred on the new concrete at Dinosaur Hill. She said she caught a little bit of flack for being very unhappy about it, but she wanted everyone to know that she is holding the Fruita community to higher standards than that. She called it absolutely inappropriate.

Amy noted that she missed the Historic Preservation meeting. She said she's received a few calls about the "red barn" property and hopefully, it will stay intact like she'd been told. The house and the original cabin have been demolished, which created the concern that the barn might be next. Staff hasn't received any land use applications for the property.

Amy also reported that the tourism social media site corrected 18 Road and actually apologized for citing the address incorrectly.

COUNCILOR KEN KREIE

Ken said that the Mayor did the right thing in stopping Dave Karisny after his three-minute time limit for public comment was up, but he did want to hear more from Dave because he started talking about things he (Ken) hadn't heard before. The Council discussed how they always encourage citizens to submit written comments, especially if they are lengthy.

Ken noted that he hadn't had a meeting with any of his other boards.

COUNCILOR JAMES WILLIAMS

James reported that the Fruita Tourism Advisory Council (FTAC) approved a \$1,000 Budget for a winter music event in the N. Mulberry Street Plaza.

COUNCILOR JEANNINE PURSER

Jeannine asked if staff had heard about all the difficulties with the high-speed internet getting installed around town such as sidewalks being torn up and not replaced and sewer lines getting broken. Mike said he wanted to applaud Public Works Director Kimberly Bullen, who is staying on top of the subcontractor on a regular basis. Staff has had meetings with them and followed up with a pretty harshly worded letter saying that the City is going to pull their permits if they don't get the project on track. He added that hitting sewer lines is typical in the Grand Valley because the locate providers don't always know where the lines are, so that is something that just happens, although staff hopes to see that limited as much as possible. Mike concluded by saying that staff is addressing the issues and taking stronger steps going forward such as looking at potential enforcement through the permitting process and/or through timelines where if the contractor doesn't complete certain things within a certain period of time, staff will either fix it themselves or hire someone else to do it and charge back those costs to the contractor. Mike explained to the Mayor and Council that if a resident complains or has questions, they need to contact Deeply Digital first and if that doesn't help, they should contact the City's Public Works Department.

Jeannine said she loves the striped poles and holiday decorations in downtown. She reported that she and several others went to School District #51's State of the District luncheon and the student participation was fantastic. She said the State of the District is slightly grim and if anybody wanted to hear more, they could go look at the District's statistics right now.

MAYOR PRO TEM MATTHEW BREMAN

Matthew said he deeply appreciated Deeply Digital painting his decorative rocks and plants.

Matthew reported that he did not have a Grand Junction Economic Partnership (GJEP) meeting but did have the Fruita Area Chamber of Commerce's Annual Retreat, where there was a lot of discussion about coming up with plans for festivals and how to move forward. There is a commitment to have a plan in place by this time next year.

Matthew also explained that the Chamber needs to be the "voice of business," and part of that is communicating that voice to the City Council.

C. EXECUTIVE SESSION - TO CONVENE IN EXECUTIVE SESSION PURSUANT TO C.R.S. SECTION 24-6-402(4)(E) FOR DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING

STRATEGY FOR NEGOTIATIONS; AND INSTRUCTING NEGOTIATORS AND PURSUANT TO C.R.S. SEC. 24-6-402(4)(A) FOR THE POSSIBLE SALE OR LEASE THEREOF WITH REGARD TO THE REDEVELOPMENT OF 169 N. MULBERRY STREET

- **COUNCILOR KREIE MOVED TO CONVENE IN EXECUTIVE SESSION PURSUANT TO C.R.S. SECTION 24-6-402(4)(E) FOR DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING STRATEGY FOR NEGOTIATIONS; AND INSTRUCTING NEGOTIATORS AND PURSUANT TO C.R.S. SEC. 24-6-402(4)(A) FOR THE POSSIBLE SALE OR LEASE THEREOF WITH REGARD TO THE REDEVELOPMENT OF 169 N. MULBERRY STREET. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

The Fruita City Council convened in Executive Session at 10:56 p.m. They reconvened the regular meeting at 11:20 p.m.

12. ADJOURN

With no further business before the Council, Mayor Kincaid adjourned the meeting at 11:20 p.m.

Respectfully submitted,

Debra Woods
Deputy City Clerk
City of Fruita

**FRUITA CITY COUNCIL SPECIAL MEETING
NOVEMBER 13, 2023
6:30 P.M.**

1. CALL TO ORDER AND ROLL CALL

Mayor Kincaid called the regular meeting of the Fruita City Council to order at 6:30 p.m. The meeting was held both in person and with virtual access provided through Zoom.

Present:

Mayor Joel Kincaid
Mayor Pro Tem Matthew Breman
City Councilor Jeannine Purser
City Councilor James Williams
City Councilor Amy Miller
City Councilor Aaron Hancey

Excused Absent:

City Councilor Ken Kreie

City staff present:

City Manager Mike Bennett
Assistant City Manager Shannon Vassen
Deputy City Clerk Deb Woods
Parks and Recreation Director Marc Mancuso
Public Works Director Kimberly Bullen
City Attorney Mary Elizabeth Geiger

Also present:

Realtor Lori Chesnick
Members of the public

2. AGENDA – ADOPT/AMEND

- **COUNCILOR BREMAN MOVED TO ADOPT THE AGENDA AS PRESENTED. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

3. PUBLIC PARTICIPATION

Mayor Kincaid explained that because none of the agenda items for this meeting were public hearings, the only time the public would have a chance to speak on any item (including those that may be on the agenda) would be now, during Public Participation.

Jim Cook, 2331 S. 15 Rd, Glade Park, thanked the City Council for allowing the “Friends of Enoch’s Lake” the extension of time to figure out how to keep Enoch’s Lake open to the public. He said that sadly, they haven’t been able to get anyone to partner with them to purchase and maintain the property, so he was just in attendance at this meeting to see what was going to happen with it.

Steve Romo, 1130 Aquarius, Fruita, said he didn’t believe that the City of Fruita ought to be involved in recreational areas outside of the city limits and that if Enoch’s Lake was no longer owned by the City, that money could be used to either correct the problems at Fruita Reservoir #2 or on parks

and other local things in town. He stated that he has 88 houses in his HOA and a lot of his neighbors said they never use Enoch's Lake, so he thinks that residents' money could be better spent elsewhere.

Rod Power (one of the people who offered to buy Enoch's Lake), said he has been a landowner on Pinyon Mesa for almost 60 years and during that time, he and his partners Stan Muhr and Ronald Tipping put somewhere between 3,000 and 4,000 acres into conservation easements. He added that the property that he presently and personally owns is somewhere between 4,000 and 5,000 acres, all of which is also in a conservation easement. Mr. Power explained that he and his partners have spent their lives making sure that Pinon Mesa was not subdivided.

Mr. Power said that he and his partners have been stewards of the land and continue to do so. He said they have talked to all the agencies such as Colorado Parks and Wildlife and all of them say that they would have the same problems handling the property that Fruita has. He said he would answer any questions that the Council may have.

Hearing no further comments from the public, Mayor Kincaid closed Public Participation.

4. AGENDA ITEMS

A. ENOCH'S LAKE PROPOSAL

Public Works Director Kimberly Bullen recalled that at the September 19, 2023 Regular City Council meeting, the Council directed staff to work with the City's Realtor, Lori Chesnick (present in the audience) to list the Enoch's Lake property on the Multiple Listing Service (MLS) until November 8, 2023 at the appraised value of \$425,000. The listing included information that the property is encumbered by the Ute Water Right of First Refusal and the 2013 Agreement with Ron Tipping for repayment of the non-monetary obligation as well as an Agreement with Stan Muhr for the delivery of water. The listing also includes the information about the dam being a jurisdictional dam that is subject to the requirements, rules and regulation of Dam Safety from the State of Colorado. The ultimate sale of Enoch's Lake must be approved by City Council through an Ordinance process as prescribed by the Fruita City Charter.

Ms. Bullen invited Realtor Lori Chesnick to speak about the proposal that the City received and answer any questions the Council may have.

Ms. Chesnick provided an overview of the proposal from the three buyers that was basically the same offer that they had presented to the City previously which amounts to \$645,393.36. The actual purchase price is \$500,000 plus the amount that is owed Mr. Tipping that will either be forgiven or waived. Ms. Chesnick explained that the real estate commission would be based on the \$500,000.

Ms. Chesnick continued, saying that it would be a cash transaction, but included in the contract are additional provisions that:

1. Ronald D. Tipping, Stan Muhr and Rodney C. Power are willing to permit public access to Enoch's Lake on a limited basis.
2. Government agencies such as Colorado Parks and Wildlife (CPW), Mesa County and City of Fruita may be able to reserve Enoch's Lake but must provide adequate insurance protection for the liability exposure including coverage for the above-named purchaser, buyers and their entities.

Ms. Chesnick stated that the buyers are going to put forth that they will allow public access with those caveats.

Councilor Hancey asked if Ms. Chesnick had received any other offers besides the one being considered by the City Council. Ms. Chesnick responded that she received no offers but had sent out 14 packets of information, 7 of which were to other real estate brokers or agents. The last offer came in on November 7th at 5:00 p.m. when she met the buyer at her office and printed off for him the 62 pages of the documents. Ms. Chesnick added that she had ten specific phone calls regarding the sale of Enoch's Lake; however, the lake also came up in many conversations with agents or buyers who called to discuss other properties. She said she gave them the general information that the public has.

Councilor Hancey asked if there was a proposed closing date. Ms. Chesnick explained that first, the City would have to go through the First Right of Refusal with Ute Water, so a closing date had not been scheduled because she wasn't sure how long Ute Water was going to take. She added that there is a process the City also needs to go through, but once that is done, the buyers are willing and ready to close immediately.

Councilor Hancey asked the City Attorney to recap what the City's process is. City Attorney Mary Elizabeth Geiger explained that at this meeting, the Council would decide whether or not to move the offer first to Ute Water for them to decide whether they were going to exercise their Right of First Refusal. If Ute Water decides they do not want the property, then the matter would then move into the Ordinance process including a First Reading of an Ordinance to set the public hearing (Second Reading). At the Second Reading, the Council will accept public comment and ask the buyers any questions they may have. The offer may potentially be amended at that time.

Mrs. Geiger noted that staff was recommending that the Council set the date for the First Reading of the Ordinance because the Second Reading could always be pushed out further into the future if necessary. She added that in her previous conversations with Ute Water, they had indicated that they wanted to see any other offer the City receives, but the decision would be made at the staff level so no one would have to wait for the next meeting of the Ute Water Board of Directors.

Councilor Hancey asked when the original First Reading of an Ordinance had occurred and Mrs. Geiger recalled that it was June 20, 2023, almost six months ago.

Councilor Williams thanked the buyers for considering the possibility of public use at Enoch's Lake and allowing the City to reserve it because those were not things that were included in the original offer. He asked Lori Chesnick to describe that process a little bit more. Ms. Chesnick said that when she met with the buyers, they brought in a handwritten note with a statement on it concerning how they had talked about it between the three of them and knew it was important to keep the lake as public as possible but that in doing that, they would be assuming liability. She said she thought the buyers would decide on a case-by-case basis and someone wanted to reserve the lake, they would have to provide proof of indemnity insurance so that they would be the responsible party and the buyers would be covered. Ms. Chesnick said that if the offer were to move forward, it could be clarified to make sure everyone knows what the responsibilities are. City Attorney Mary Elizabeth Geiger advised that this was not something that could be negotiated at this time; that the matter before the Council was the offer and whether or not to begin moving forward with it. She added that a conversation regarding public access or any other aspect of the offer could be addressed at the public hearing. Councilor Williams stated that he wanted it on record that he appreciated the fact that the buyers brought the issue up on their own.

- **COUNCILOR WILLIAMS MOVED 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 PINYON 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 ON DECEMBER 19, 2023. COUNCILOR BREMAN SECONDED THE MOTION.**

Councilor Hancey said he was really grateful for how the Council had taken action on this matter and that it was good to provide transparency and ample opportunities to citizens to provide input after nearly five months of working on it.

WHEN THE VOTE WAS TAKEN, THE MOTION PASSED WITH FIVE YES VOTES.

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

Public Works Director Kimberly Bullen began by providing some background on the briefing on the Natural Resources Conservation Service (NRCS) Preliminary Investigative Feasibility Report (PIFR). She explained how staff had reached out to NRCS and applied for some grant funding under the PL-566 Program, which is a Watershed and Flood Protection Program. Identified for the project was repair of Reservoir #2 as well as other infrastructure repairs for which the City was awarded a \$55,000 grant to conduct the PIFR. The money went directly to an engineering firm that was selected by the NRCS to conduct the study. Ms. Bullen stated that staff has not yet received the final report but did receive an email that informed them that Fruita would not be recommended for funding through the PL-566 Program.

Ms. Bullen said that some preliminary information staff received was that the economics just did not present well; the cost-benefit analysis was not in favor of what staff was proposing. She added that some of the options included:

- Repairing Reservoir #2 at a cost of approximately \$2.5 million
- Repairing Reservoir #2, the pipeline and the other infrastructure at a cost of approximately \$4 million
- Decommission Reservoir #2 at a cost of approximately \$1.3 million

Ms. Bullen said staff is hoping to get the report so they can actually dive into it and understand it a little bit better.

In waiting for the report, the City Council gave staff direction to proceed with conducting a Request for Proposal (RFP) for breach of Reservoir #2. Staff received five proposals from qualified engineering firms, two of which were disqualified because they didn't sign the acknowledgment form acknowledging Addendum 2. Staff and an engineer with Dam Safety reviewed the remaining three

proposals to determine who would be best for the project. Construction costs were not included because the design of the breach is pretty intensive and complex involving the requirements of various agencies.

Ms. Bullen stated that staff was recommending (if the Council decides to move forward with breaching Reservoir #2) that 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 US Forest Service requirements. SGM's proposal was the most comprehensive, showing they fully understand the project and necessary requirements. Ms. Bullen noted that SGM's proposal was valid until December 28, 2023.

Ms. Bullen noted that this agenda was strictly for informational purposes and required no immediate action of the Council. Staff will be coming back before Council with more of an official process for moving forward.

City Manager Mike Bennett further advised that hypothetically, if staff were to take the next step of working with SGM, it would require a budget amendment and execution of a contract for design of the scope of work (working with the US Forest Service and the state's Dam Safety Engineer) to breach Reservoir #2. He reminded the Council that this Reservoir has essentially been inoperable for about seven years now through a no-fill order and that when it has filled, staff has had to go there regularly to siphon the water out of the reservoir until it reaches an acceptable level.

Mr. Bennett added that staff will continue to look into funding mechanisms and opportunities for repair or breach of Reservoir #2.

There was consensus among the Council members to direct staff to move forward with the recommendation of breaching Reservoir #2, awarding the contract for design to SGM and bringing forth the necessary items for Council action at a December 2023 Council meeting.

C. FRUITA MOUNTAIN PROPERTIES RESOLUTION

City Manager Mike Bennett stated that another direction from City Council at the September 19, 2023 regular Council meeting was to prepare a Resolution to provide public clarity on the history, challenges and why the City desires to divest the City's interest in owning and maintaining the Fruita mountain properties. He explained that the details in the Resolution were gathered from recaps and all the information of the City's webpage dedicated to Fruita mountain properties and if there are people who are wondering why the City is taking the position it is, they can be directed to that webpage for a timeline and all the information. There will also be a link on the webpage that directs them to the City Council's statement on what they are striving to do.

Mr. Bennett read proposed [Resolution 2023-34 – Divesting the City of Fruita from owning, maintaining and managing all City of Fruita Mountain Properties](#) (including water rights) into the record.

- **COUNCILOR MILLER MOVED TO APPROVE RESOLUTION 2023-34 AS PROPOSED. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

5. CITY MANAGER'S REPORT

City Manager Mike Bennett did not have any reports.

6. COUNCIL REPORTS AND ACTIONS

MAYOR JOEL KINCAID

Joel said that all Council members should have received an email concerning the Mesa County School District #51 letter and asked if anyone had any questions or anything to add.

Jeannine said she thought it was really well done but thought the Council should request the postponement of any decisions until more public input can be considered. She also wanted to include a strong statement that the Fruita City Council has concerns in the letter to the School District.

Joel noted that the School District is doing a Needs Assessment for all of their buildings that is due in March of 2024 and that he, Mike and Matthew discussed why the District would be making a decision on boundary changes before they know what buildings really need the most work.

James asked if the Council wanted to request that the District postpone any decisions until after the Needs Assessment is completed, which is a reasonable request.

Mike announced that the following evening, District #51 Board of Education was due to consider making a boundary change to two elementary schools that come into the Fruita Monument High School boundary. He said when he and Mayor Pro Tem Matthew Breman previously met with the Board President and his staff, he and Matthew mentioned how it was a rushed process without a lot of engagement and therefore, the City of Fruita would like some consideration. Mike noted that the draft letter to the District points out how the District's discussions and survey questions tied Fruita grade reconfiguration to the need of voter-approved funding to expand FMHS to accommodate grades 9-12.

Joel stated that if the results of the School District's Needs Assessment show that there are four other schools that are of higher priority than FMHS, it is going to be very difficult for the City of Fruita to say it should be next. He added that having the study was very important for helping to make the best decision.

The Council asked that the following requests be included in the draft letter to the School District:

1. A delay in deciding the boundary changes to first have more community engagement and feedback
 2. The results of the ongoing Needs Facility Study
 3. More thorough information on other impacts the boundary change would have to FMHS
- **COUNCILOR BREMAN MOVED TO AUTHORIZE THE MAYOR TO SIGN THE LETTER TO THE SCHOOL DISTRICT. COUNCILOR WILLIAMS SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

COUNCILOR JEANNINE PURSER

Jeannine reported that the Localism Committee would be meeting on Wednesday and that Communications and Engagement Specialist Ciara DePinto had some good notes about how to kick the meeting off. She asked the other Council members if they had anything specific they wanted the committee to begin with. Joel said a committee's responsibility is to give the Council information on whether the City should form a board for the purpose of focusing on Fruita's local population. He added that the committee should bring forth ideas to the Council concerning what the committee members think the board should do and whether those will meet the goals of the City. Aaron said there were a lot of ideas that were included on the application form. Mike listed a few items the Localism Committee could start with such as:

- Help extend the City's communication efforts further into the community and reach groups that the City may not be reaching well currently
- Educate Fruita residents on more ways they can participate in the community with an emphasis on the City's Comprehensive Plan and goals of *Quality of Place, Economic Health, Core Services and Lifestyle*
- Helping with local community events, messaging and education on supporting localism

Amy said she was excited to see what the committee comes up with because it is a very diverse group that she thinks will represent Fruita well.

COUNCILOR AARON HANCEY

Aaron asked for an update on the RV parking lot at Dinosaur Journey. Mike responded that Parks and Recreation Director Marc Mancuso has been working with the Museum of Western Colorado's (MWC's) curator Dr. Julia McHugh on it. Two of the RVs have been listed for sale on the government surplus auction site govdeals.com and the other two will be moved to the Cross Orchards museum site. Mr. Mancuso and the MWC are looking for more of a long-term solution instead of continuing to move the RVs back and forth and in the meantime, the City has offered to move the RVs to the back of the museum. The MWC said they would take care of that, but they still haven't done it yet.

Aaron noted that he saw signs on 19 Road that say it will be closed next week and asked what staff is doing to make sure the community is well informed about the closure and what the detour will be. Mike said he knew that the City's Engineering Department is involved with the project and that the big steps for the closure have already been taken such as putting up the digital sign. Public Works Superintendent John Carrillo was present in the audience and responded that he was assuming the closure was due to a 65-year old gas line that Xcel Energy owns down the 19 Road corridor because they had done some replacement on 19 ½ Road and K Road already, but none of the permits have hit the City of Fruita within the boundaries yet. Mike said it was his understanding that it's utility work. Aaron noted that a Council meeting was scheduled for the following evening and said it would be nice if staff could bring more information to the Council. Mike said staff would do that. Aaron also requested that staff make sure to get the word out to the public. Public Works Director Kimberly Bullen stated that the Public Works Department does review and approve Traffic Control Plans for any road closure that's done in the City and added that the permits have not yet hit staff's desk as Mr. Carrillo had indicated. Matthew said that Xcel Energy is not always the best at communicating all of their intentions and timelines through the City. Aaron said his point was concerning what the Council should tell people when they start complaining about the road closure. Mike said he would bring more information to the upcoming Joint Workshop with the Fruita Planning Commission meeting the following night.

MAYOR PRO TEM MATTHEW BREMAN

Matthew advised that he had a brief speaking engagement the following evening, so he might be a few minutes late to the Joint Workshop with the Fruita Planning Commission depending on whether everything is running on time.

COUNCILOR AMY MILLER

Amy noted that she RSVPd for the Grand Junction Economic Partnership (GJEP) holiday party. Staff confirmed that the event would be included on the official meeting calendar on the City's website.

7. ADJOURN

With no further business before the Council, Mayor Kincaid adjourned the meeting at 7:42 p.m.

Respectfully submitted,

Debra Woods
Deputy City Clerk
City of Fruita



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL

FROM: DEPUTY CITY CLERK DEBRA WOODS FOR MAYOR JOEL KINCAID AND COUNCILOR AMY MILLER

DATE: FEBRUARY 6, 2024

AGENDA TEXT: BOARDS AND COMMISSIONS REAPPOINTMENT – A request to approve the reappointment of Yvonne Peterson to the Historic Preservation Board for another three-year term to expire in February of 2027

BACKGROUND

Yvonne Peterson's term on the Historic Preservation Board will expire in March of 2024. On January 16, 2023, Yvonne Peterson submitted her application to be reappointed to the Historic Preservation Board. A vacancy on the Historic Preservation Board has been advertised since January of 2024 and staff has received no other applications.

Mayor Kincaid and Board Liaison Councilor Amy Miller recommend Yvonne Peterson's reappointment to the Historic Preservation Board for another three-year term to expire in February of 2027. Pursuant to the term limits provision in the Boards and Commissions Policy adopted by the Fruita City Council on August 4, 2020, after this reappointment, Yvonne will be term limited.

If Yvonne Peterson is reappointed, there will be one remaining vacancy on the Historic Preservation Board due to the resignation of board member Brian Lochlaer on January 25, 2024.

FISCAL IMPACT

N/A

APPLICABILITY TO CITY GOALS AND OBJECTIVES

Boards and Commissions provide valuable input to the City and help establish goals and objectives. They provide a link between citizens of Fruita and city government.

OPTIONS AVAILABLE TO THE COUNCIL

1. Reappoint Yvonne Peterson to the Historic Preservation Board for another three-year term to expire in February of 2027

2. Instruct staff to publish a notice of vacancy and repeat the interview process.

RECOMMENDATION

It is the recommendation of Mayor Kincaid and Councilor Miller that the following reappointment be made:

- **YVONNE PETERSON TO THE HISTORIC PRESERVATION BOARD FOR ANOTHER THREE-YEAR TERM TO EXPIRE IN FEBRUARY OF 2027**



**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: FRUITA HISTORIC PRESERVATION BOARD

NAME: YVONNE PETERSON

MAILING ADDRESS: Box 684

FRUITA Colo 81521

City State Zip

RESIDENCE ADDRESS: 976 LAURA Ave FRUITA CO 81521

PHONE NUMBER: 970-858-3868

Home Work

E-MAIL ADDRESS: NONE

How long have you been a resident of Fruita? 1950

Occupation/Employer: Presman Mesa College Retired

List any volunteer and/or work experience:

I work with 3 History Projects -
1- Lower Valley History Room -
2- Territorial Daughters - I am Historian for
3- Mesa County Historical Society - member since Beginning

Are you presently serving on a board or commission? If so, which one(s)?

In Fruita Preservation Board at time

Why do you want to be a member of this board or commission?

I have been member SINCE IT WAS STARTED -

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

am interested in Fruita History & do work well
at a time -

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings?

☒ Yes

☐ No

Are you committed to serving an entire term?

☒ Yes

☐ No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

If I die - and I don't plan right away

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

I started The Lower Valley History Center THAT IS located in Display Room - I have been interested in Fruita and Lower Valley History of Valley I am 89 and all my life I have lived in this valley and working with the history.

Additional information or references you believe may be helpful in considering your application.

*I am a member of Territorial Daughters - you have ~~Lower Valley~~ in Colo. before it was a state.
 Am a member of Mesa County Historical Society - since it began.
~~Lower~~ Lower Valley History Center - began it.*

Signature

Gyenne M Peterson

Date

Jan 13-2024

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES

Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: Planning & Development Department

DATE: February 6, 2024

AGENDA TEXT: ORDINANCE 2024-07 - FIRST READING - An introduction of an Ordinance amending the official zoning map of the City of Fruita by zoning approximately 5.07 acres of property located at 614 Raptor Road to a Planned Unit Development zone for public hearing on March 5, 2024 (*Geode Flats PUD*)

BACKGROUND

This is an introduction Ordinance to set a public hearing date for the adoption of zoning standards for the Geode Flats PUD for the development of either affordable or market rate rental housing over approximately 5.07 acres.

This application was continued from the January 9, 2024, Planning Commission meeting to a special Planning Commission meeting for January 30, 2024. The Planning Commission made a motion to accept the continuance request and a motion to hold a Special Planning Commission meeting on January 30, 2024.

This application began back on January 24, 2023, when the Planning Commission and City Council held a joint workshop on the Concept Plan for this project previously named the Residences at Fruita. Concept Plans are designed for PUDs as an optional 1st step in the review process where the Planning Commission and City Council can provide non-binding feedback in a workshop/work session and are intended to provide overall direction to the applicant.

The property is approximately 5.07 acres located directly west of the La Quinta Inn and northeast of James M. Robb State Park. The property is also bordered by Raptor Road on the north and Jurassic Court on the south. Based on the project narrative, “The proposed Preliminary PUD Plan takes a form-based approach to multifamily development to provide new housing that matches the look and feel of the surrounding area and promotes more affordable housing while providing a demonstrated public benefit that would not be available under conventional zoning restrictions in terms of density, building heights, parking, and public benefit.”

The plan includes four (4) multi-family residential buildings and a clubhouse with proposed access coming from Jurassic Court on the south and another access coming from the west side.

The plan identifies two (2) separate planning areas, Planning Area A and B, with a total of five (5) buildings and four (4) of which are designed for multi-family. Submitted with the application is a PUD Guide, which will serve as the primary zoning standards for the property with the primary goal of this project is to create affordable housing. The PUD Guide details out zoning standards for the property

including land uses, density, setbacks, building heights, design standards, parking standards, landscaping standards, site lighting standards, and signage. Much like other PUD Guides, anything not mentioned in the PUD Guide will revert to the City's Land Use Code.

The Planning Commission heard this application at a Special Meeting on January 30, 2024, and recommended approval by a vote of 5-0 to the Fruita City Council for public hearing on March 5, 2024.

Recommendations/Conditions by Staff:

1. Remove all commercial land uses from the PUD Guide.
 - a. A reverter clause be used to revert back to the C-2 zone if affordable housing or market rate rental housing is not constructed.
2. \$100k childcare cash in lieu fee be paid upon Site Plan approval.
3. Design Standards contained in Section 17.13.060 (B)(1) be met as written in the Land Use Code.
4. If this PUD Guide is approved with these conditions by Staff and fully met, then a future Site Design Review application be reviewed administratively unless there is a major modification or change in the application deemed by the Community Development Director.

FISCAL IMPACT

Because the nature of this Ordinance is residential, there are no fiscal impacts associated with adoption. If the subject property is to develop, a fiscal impact will be associated with the public improvements.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The proposed Planned Unit Development zoning is in general conformance with the City of Fruita's Land Use Code and Comprehensive Plan. The Comprehensive Plan, adopted in February 2020, provides guidance and support for efficient development, connectivity, infill development, open space, and diversity of housing types. Influenced heavily by community values, the vision statement was created and states, *"The City of Fruita values quality of place. It's an inclusive city, with a small-town feel and vibrant downtown, surrounded by public lands. People love to live, work, and play in Fruita because the City facilitates community, safe neighborhoods, family-friendly events, and walking and biking. The City governs in a way that's responsive to its citizens and prioritizes high-impact services and projects. Fruita fosters a fun and funky ambiance around the arts, agriculture, and recreation."* (Page 3, Fruita In Motion: Plan Like A Local Comprehensive Plan)

The Land Use & Growth chapter of this plan (Chapter 3) contains strategies and policies on increasing the diversity and supply of housing in Fruita. For workforce housing, emphasis is on market rate and affordable (income restricted) rental housing and attainably priced ownership housing.

The Future Land Use Map prioritizes infill over sprawling residential development at the edge of the city limits. The policies in this plan aim to spur residential development within the existing city limits and UGB. It aims to transform the State Highway 6&50 corridor by allowing and encouraging multifamily housing on parcels and blocks adjacent to this corridor. (Chapter 3 Land Use & Growth, Page 26, Comprehensive Plan).

Goal #4. Allow and encourage a diversity of housing types to fit the needs of the Fruita community and provide the diverse "funky" character that is treasured by residents.

Fruita's housing stock is getting more homogenous and more expensive. As a community that prides itself on being inclusive, this ethos should extend to providing types of housing for people of different ages, income ranges, family structures, and aesthetic preference. Allowing and encouraging more apartments and/or townhomes in appropriate locations could contribute to more affordable housing options. (Chapter 3 Land Use & Growth, Page 39, Comprehensive Plan).

The City's Master Plan also states that the City of Fruita, "Support the Mesa County Public Health Department and its Childcare 8,000 initiative in seeking to increase the number of available spaces for childcare in the county" (Goal #2, Policy 2.E, on Page 66). This has been a continued goal of the City of Fruita for many years. Additionally, Page 96 of the Master Plan states that the City of Fruita, "support ample, affordable early learning and childcare centers for city residents."

OPTIONS AVAILABLE TO THE COUNCIL

1. Publish a synopsis of Ordinance 2024-07, an Ordinance amending the official zoning map of the City of Fruita by zoning approximately 5.07 acres of property located at 614 Raptor Road to a Planned Unit Development zone for publication of public hearing on March 5, 2024
2. Deny Ordinance 2024-07.

RECOMMENDATION

Staff recommends that the Council move to:

PUBLISH A SYNOPSIS OF ORDINANCE 2024-07, 1ST READING, AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 5.07 ACRES OF PROPERTY LOCATED AT 614 RAPTOR ROAD TO A PLANNED UNIT DEVELOPMENT ZONE FOR PUBLICATION OF PUBLIC HEARING ON MARCH 5, 2024.

ORDINANCE 2024-07**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 5.07 ACRES OF PROPERTY LOCATED 614 RAPTOR ROAD TO A PLANNED UNIT DEVELOPMENT KNOWN AS THE GEODE FLATS.**

WHEREAS, the property owner, TWG Raptor LP (“Owner”) has submitted a request to zone the property described in the attached Exhibit A, and commonly referred to as Geode Flats (the “Property”) to a Planned Unit Development (PUD) zoning designation, and

WHEREAS, the Fruita Planning Commission has recommended to the City Council approval of adopting the PUD Guide to clarify specific zoning related to the development, and

WHEREAS, the proposal is in conformity with the Fruita In Motion: Plan Like a Local Comprehensive Plan (“Comprehensive Plan”) of the City of Fruita and the City of Fruita Land Use Code (“LUC”), and

WHEREAS, by adopting the attached PUD Guide, land use, dimensional standards, and building design on the Property can be evaluated on an individual basis and impacts on surrounding land uses can be mitigated, and

WHEREAS, Owners have submitted a PUD Guide entitled, “Geode Flats” which includes dimensional standards, design standards and use restrictions for development of the Property, and

WHEREAS, proper publication and public notice were provided as required by law for the hearings before the Planning Commission and the City Council, and

WHEREAS, based on the evidence, testimony, exhibits, relationship to the Comprehensive Plan and LUC, comments of Community Development Department, Review Agencies, and Planning Commission hearing minutes, the recommendation of the Planning Commission, and comments from all interested parties, the City Council finds as follows:

Pursuant to Chapter 19 of the Fruita Land Use Code, the City Council makes the following findings in its review of the PUD Application:

- a) The application is in general conformance with the Land Use Code and Comprehensive Plan.
- b) The proposed plan conforms to all applicable regulations policies and guidelines.
- c) The application does not vary the health and safety requirements contained in Title 8 of the Fruita Municipal Code.
- d) The application does not vary from the requirements concerning public improvements contained in Title 12 of the Fruita Municipal Code.
- e) The application does not vary from the requirements concerning water and wastewater contained in Title 13 of the Fruita Municipal Code.

THE CITY OF FRUITA HEREBY ORDAINS:

Section 1: That the Zoning Map adopted pursuant to Section 17.03.030 of the Fruita Municipal Code is hereby amended and that the Property described and shown on the attached Exhibit A, containing 5.07 acres, more or less, is hereby designated as a Planned Unit Development Zone (PUD);

Section 2: That the PUD guide entitled, “Geode Flats” attached hereto as Exhibit B establishes dimensional standards including but not limited to land uses, amenities, building design guidelines, parking standards, setbacks, and lot coverage within the Geode Flats development and is approved;

Section 3: Special Conditions: That the development of the Property will be required to adhere to the conditions outlined in the Planned Unit Development Guide for the Geode Flats development attached hereto as Exhibit B.

Section 4: Reverter Clause: In the event, the Planned Unit Development fails to develop as either market rate or affordable multifamily development at the property owner's discretion, the zoning of the land shall automatically revert to Commercial Two (C-2), as it existed prior to the Planned Unit Development approval. This reverter clause shall terminate automatically once construction of the multifamily development begins and if requested by the owner, the City or local municipality shall provide written confirmation of the same.

Section 5: It shall be a Class B municipal offense, as defined in the Fruita Municipal Code, for any person to knowingly erects, constructs, reconstructs, uses, or alters any building or structure or knowingly uses any land in violation of the Sunset Pointe Planned Unit Development Guide herein adopted.

Section 6: The City Clerk is directed to:

1. File the original of this Ordinance and attached exhibit in the office of the City Clerk of Fruita, Colorado;
2. File one copy of this Ordinance and attached exhibit in the office of the Mesa County, Colorado, Assessor; and
3. File for record one certified copy of this ordinance and attached exhibits with the Clerk and Recorder of Mesa County, Colorado.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS 5TH DAY OF MARCH 2024**

ATTEST:

City of Fruita:

Margaret Sell, City Clerk

Joel Kincaid, Mayor



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEBRA WOODS, DEPUTY CITY CLERK

DATE: FEBRUARY 21, 2023

AGENDA TEXT: SPECIAL EVENT LIQUOR PERMIT APPLICATION – A request to approve an application from the Fruita Arts and Culture Board to serve wine at the Coco Vino Fundraiser to be held on Friday, March 15, 2024 from 3:00 to 10:00 p.m. at Our Lady of Perpetual Motion located at 503 E. Aspen Ave.

BACKGROUND

The Fruita Arts and Culture Board has filed an application for a Special Events Liquor Permit to serve wine during the Coco Vino Fundraising event on Friday, March 15, 2024 from 3:00 to 10:00 p.m. at Our Lady of Perpetual Motion located at 503 E. Aspen Ave. State law allows any municipality, county, or special district to apply for a Special Events Liquor Permit, and the Fruita City Council adopted Resolution 2011-32, which authorizes the Local Licensing Authority to issue Special Events Liquor Permits to qualifying organizations and political candidates without sending the application to the State Authority for approval.

The City of Fruita requires that the applicant submit a narrative addressing specific issues related to the Special Events Permit. The application, permission from the property owner, narrative, diagram and Fruita Police Department Memorandum are attached.

The diagram of the licensed premises submitted with the application controls the area in which alcohol may be sold or consumed and should be strictly adhered to.

FISCAL IMPACT

None.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

N/A

OPTIONS AVAILABLE TO THE COUNCIL

1. Approval of the special events permit for the Fruita Arts and Culture Board's Coco Vin Fundraiser event
2. Denial of the special events permit

RECOMMENDATION

IT IS THE RECOMMENDATION OF STAFF THAT THE COUNCIL BY MOTION:

- **APPROVE THE APPLICATION FOR A SPECIAL EVENTS PERMIT FOR THE FRUITA ARTS AND CULTURE BOARD TO SERVE WINE DURING THE “COCO VIN FUNDRAISER” ON FRIDAY, MARCH 15, 2024 FROM 3:00 TO 10:00 PM AT OUR LADY OF PERPETUAL MOTION LOCATED AT 503 E. ASPEN AVENUE UNDER THE FOLLOWING CONDITIONS:**
 - 1. APPLICANT WILL DISCONTINUE SERVING ALCOHOL AT 9:30 PM ON FRIDAY, MARCH 15, 2024 TO ALLOW PATRONS 30 MINUTES TO FINISH BEVERAGES AND LEAVE THE AREA**
 - 2. ALL ALCOHOL WILL SECURED AND REMOVED BY 10:00 PM**
 - 3. NO ALCOHOL SHALL BE BROUGHT INTO OR OUT OF THE LICENSED PREMISES**
 - 4. THE LICENSEE IS SOLELY RESPONSIBLE FOR CONTROL OF THE LICENSED PREMISES IN REGARDS TO ALCOHOL POSSESSION, CONSUMPTION AND ADHERENCE TO STATE AND MUNICIPAL LIQUOR LAWS**

RECOMMENDED MOTION:

- **APPROVE THE APPLICATION FOR A SPECIAL EVENTS PERMIT FOR THE FRUITA ARTS AND CULTURE BOARD TO SERVE WINE DURING THE “COCO VIN FUNDRAISER” ON FRIDAY, MARCH 15, 2024 FROM 3:00 TO 10:00 PM AT THE OUR LADY OF PERPETUAL MOTION LOCATED AT 503 E. ASPEN AVENUE SUBJECT TO THE CONDITIONS STATED BY STAFF**

Application for a Special Events Permit

Departmental Use Only

Section A, Item 1)

rcvd 12/14/20

In order to qualify for a Special Events Permit, You Must Be a Qualifying Organization Per 44-5-102 C.R.S. and One of the Following (See back for details.)

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Social | <input type="checkbox"/> Athletic | <input type="checkbox"/> Philanthropic Institution |
| <input type="checkbox"/> Fraternal | <input type="checkbox"/> Chartered Branch, Lodge or Chapter | <input type="checkbox"/> Political Candidate |
| <input type="checkbox"/> Patriotic | <input type="checkbox"/> National Organization or Society | <input type="checkbox"/> Municipality Owned Arts Facilities |
| <input type="checkbox"/> Political | <input type="checkbox"/> Religious Institution | |

LIAB	Type of Special Event Applicant is Applying for:	DO NOT WRITE IN THIS SPACE
2110 <input type="checkbox"/> Malt, Vinous And Spirituous Liquor	\$25.00 Per Day	Liquor Permit Number
2170 <input type="checkbox"/> Fermented Malt Beverage	\$10.00 Per Day	

1. Name of Applicant Organization or Political Candidate <i>Fruita Arts & Culture Board</i>	State Sales Tax Number (Required)
--	-----------------------------------

2. Mailing Address of Organization or Political Candidate (include street, city/town and ZIP) <i>City of Fruita 325 E. Aspen Fruita, CO 81521</i>	3. Address of Place to Have Special Event (include street, city/town and ZIP) <i>503 E. Aspen Fruita, CO 81521</i>
---	--

4. Authorized Representative of Qualifying Organization or Political Candidate <i>Nancy Patterson</i>	Date of Birth <i>6/27/61</i>	Phone Number <i>920.331.0783</i>
--	---------------------------------	-------------------------------------

Authorized Representative's Mailing Address (if different than address provided in Question 2.) <i>557 St. Croix Lane Fruita, CO 81521</i>

5. Event Manager <i>Andrea Stolarczyk</i>	Date of Birth <i>1.7.83</i>	Phone Number <i>970.200.5776</i>
--	--------------------------------	-------------------------------------

Event Manager Home Address (Street, City, State, ZIP) <i>1824 J 4/10 Rd Fruita CO 81521</i>	Email Address of Event Manager <i>pennyarcadia@hotmail.com</i>
--	---

6. Has Applicant Organization or Political Candidate been Issued a Special Event Permit this Calendar Year? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes How many days? <i>1</i>	7. Is the premises for which your event is to be held currently licensed under the Colorado Liquor or Beer codes? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes License Number _____
--	---

8. Does the Applicant Have Possession or Written Permission for the Use of The Premises to be Licensed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

List Below the Exact Date(s) for Which Application is Being Made for Permit							
Date <i>March 15, 2024</i>	Date	Date	Date	Date	Date	Date	Date
Hours From <i>3:00 p.m.</i>	Hours From	Hours From	Hours From	Hours From	Hours From	Hours From	Hours From
To <i>10:00 p.m.</i>	To	To	To	To	To	To	To

Oath of Applicant		
I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.		

Signature <i>Nancy Patterson</i>	Title <i>FACB Chairperson</i>	Date <i>12.13.23</i>
-------------------------------------	----------------------------------	-------------------------

Report and Approval of Local Licensing Authority (City or County)	
The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the provisions of Title 44, Article 5, C.R.S., as amended.	
THEREFORE, THIS APPLICATION IS APPROVED.	

Local Licensing Authority (City or County) <i>The City of Fruita</i>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County	Telephone Number of City/County Clerk <i>(970) 639-4210</i>
---	---	--

Signature <i>Joel Kincaid</i>	Title <i>JOEL KINCAID, MAYOR</i>	Date
----------------------------------	-------------------------------------	------

DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY			
---	--	--	--

Liability Information			
License Account Number	Liability Date	State	Total
		-750 (999)	\$

Special Event Liquor Permit Narrative

The Coco Vino Fundraiser scheduled for Friday, March 15, 2024 benefits the Fruita Arts and Culture board and their projects.

Wine will be served by adult volunteers and pours will come from a variety of wines provided by local wineries. This is not a wine tasting event.

There is one door for entry and exit into the building, "Our Lady of Perpetual Motion." An additional emergency exit is located at the rear of the building. Both the front and rear of the building doors will be monitored by a volunteer at each.

The licensed area is the main floor of Our Lady of Perpetual Motion. Wine will only be consumed on the main floor of this building.

There are two restrooms located on the main floor of Our Lady of Perpetual Motion.

Two volunteers will be tasked with monitoring the crowd and alcohol consumption. Participants will be restricted to two glasses (5 oz.) of wine during the event.

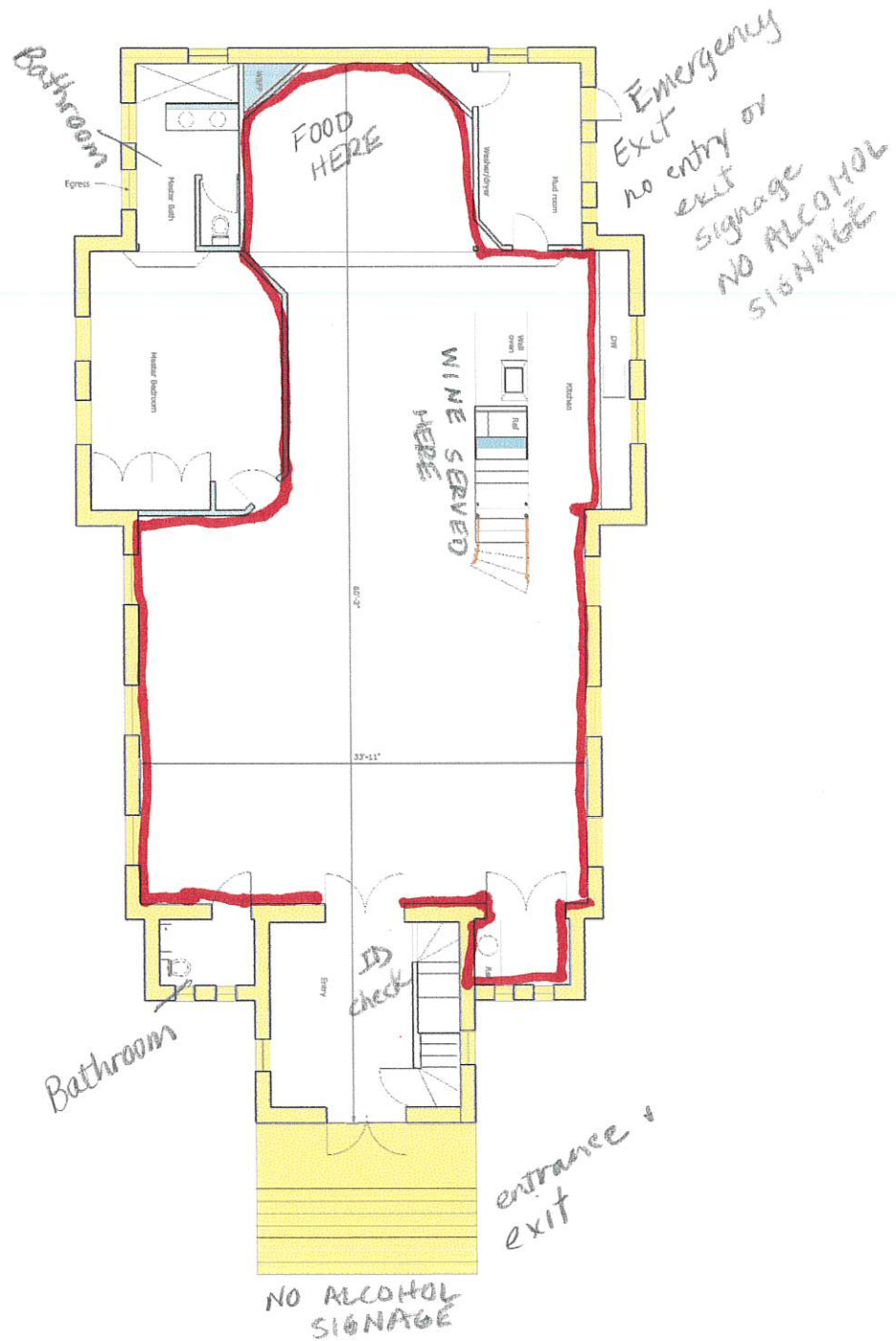
Signage will be posted at the Aspen Street and alley entrance/exit stating that no alcohol can be taken outside of the building.

ID's will be checked upon entry to the event. This is an adult only event.

All volunteers and board members will receive onsite training one hour prior to the event regarding proper protocols.

Food/desserts will be catered by local food vendors.

Coco VINO
3/15/24



The undersigned owners of Sacred Heart Church in Fruita, d/b/a Our Lady of Perpetual Motion, located at 503 E Aspen in Fruita, Colorado, hereby consent to its use as an event venue on March 15, 2024 in consideration for FACB's valuable efforts to enhance the community of Fruita and to promote Our Lady of Perpetual Motion as an event venue.

Permission to access the venue by the Fruita Arts and Culture Board (FACB) is conditioned on the following:

- 1) FACB assumes all responsibility for organizing the event, including obtaining any necessary licenses, promotion of the event, communicating with attendees, and coordinating with any vendors for delivery/pickup of any rental equipment.
- 2) FACB will have access to the venue starting in the morning of March 15, 2024; if access prior to that date is desired, the owners will endeavor to accommodate FACB's needs to the extent possible. Prior notice is appreciated.
- 3) FACB will have full access to amenities available to other guests of the church, except for use of the bedrooms and downstairs shower room. This includes use of all bathrooms and bath linens, wifi, sound system/televisions, dishes, kitchen appliances and equipment, and dishes/glassware/silverware as needed. There shall be no overnight guests without owners' express permission.
- 4) FACB will make reasonable efforts to minimize disturbance from the event to neighbors of Our Lady of Perpetual Motion, including with respect to sound disturbance after 10pm.
- 5) FACB agrees to promptly inform owners of any damage or injury arising in connection with the event, and to cooperate to the extent necessary to remedy such damage or injury, including reasonable reimbursement for repairs or submitting information to insurance carriers if appropriate.
- 6) FACB will pay to reimburse owners' incurred costs involved with cleanup of the venue after the event, as charged by the managing agent for Our Lady of Perpetual Motion or another cleaning agency mutually agreed with the owners. No other compensation is expected from FACB.

Signed by owners December 13, 2023

/tilamduhaime/
Tila Duhaime

/stevenjphillips/
Steven Phillips

Agreed to by FACB



A handwritten signature in blue ink, appearing to be 'J. Phillips', is written over a horizontal line.

Fruita Police Department

Chief David Krouse

Section A, Item 1)

157 S. Mesa St
Fruita, CO 81521

970-858-3008 Phone
970-858-3665 Fax
www.fruita.org



To: Debra Woods
From: Dave Krouse, Chief of Police
Date: January 25, 2024
Re: 2024 Coco Vino Fundraiser Special Event Liquor Permit

The application and narrative have been reviewed. There is nothing which would prohibit the issuance of the license requested.

The licensee needs to be aware they are solely responsible for control of the licensed premises in regard to alcohol possession, consumption and adherence to state and municipal laws.



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: Planning & Development Department

DATE: February 6, 2024

AGENDA TEXT: ORDINANCE 2024-06, SECOND READING, An Ordinance amending the Official Zoning Map of the City of Fruita by zoning approximately 14.52 acres of property located 1873 K Road to a Community Residential zone.

(1873 K Road Rezone)

BACKGROUND

This is a request for approval to zone approximately 14.52 acres of property to Community Residential (CR). The subject property is currently zoned Agricultural, Forestry and Transitional (AFT), which is a Mesa County zoning designation.

The applicants are requesting a Community Residential (CR) zone. The first step in the process to zone a property outside the city limits is annexation. Once the subject property has been annexed into the City Limits, zoning of the property must take place within 90 days in accordance with Section 17.17.080 of the Land Use Code and Colorado Revised Statutes (CRS) Section 31-12-115 (2).

The City Council approved the annexation application at their January 16, 2024 public meeting.

The CR zone is primarily a single-family residential zone. The density (4-8 dwelling units per acre) associated with this zone district should be compatible with future residential development as supported by the Future Land Use Map and supporting documents within the Comprehensive Plan.

The Planning Commission heard the zoning application at their December 12, 2023, public hearing and recommended approval to the City Council by a vote of 7-0.

FISCAL IMPACT

There is no fiscal impact to the City of Fruita for zoning property.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

This property is within the Urban Growth Boundary and is recommended through the Future Land Use Map contained in the Fruita Comprehensive Plan (The City's Master Plan) as being zoned Community Residential (CR).

OPTIONS AVAILABLE TO THE COUNCIL

1. Adopt Ordinance 2024-06, an Ordinance amending the official zoning map of the City of Fruita by zoning approximately 14.52 acres of property located at 1873 K Road to a Community Residential zone.
2. Deny Ordinance 2024-06.

RECOMMENDATION

It is the recommendation of Staff that the Council by motion:

ADOPT ORDINANCE 2024-06 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 14.52 ACRES OF PROPERTY LOCATED AT 1873 K ROAD TO A COMMUNITY RESIDENTIAL ZONE.

ORDINANCE 2024-06

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FRUITA BY ZONING APPROXIMATELY 14.52 ACRES OF PROPERTY LOCATED AT 1873 K ROAD TO A COMMUNITY RESIDENTIAL ZONE

WHEREAS, the subject property is shown and described in attached Exhibit A which was recently annexed to the City of Fruita by Ordinance, and

WHEREAS, a public hearing will be held by the City Council on February 6, 2024, for the zoning request, and

WHEREAS, the requested zone is consistent with the city's goals and policies including the city's Master Plan.

WHEREAS, the requested zone meets the approval criteria of Section 17.09.070 of the Fruita Land Use Code that must be considered for an Amendment to the Official Zoning Map (rezone).

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA COLORADO AS FOLLOWS:

THAT the Official Zoning Map adopted pursuant to Section 17.03.030 of the Fruita Land Use Code is hereby amended and that the subject property shown and described on the attached Exhibit A, containing approximately 14.52 acres, is hereby zoned Community Residential (CR).

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS
6th DAY OF FEBRUARY 2024.**

ATTEST:

City of Fruita:

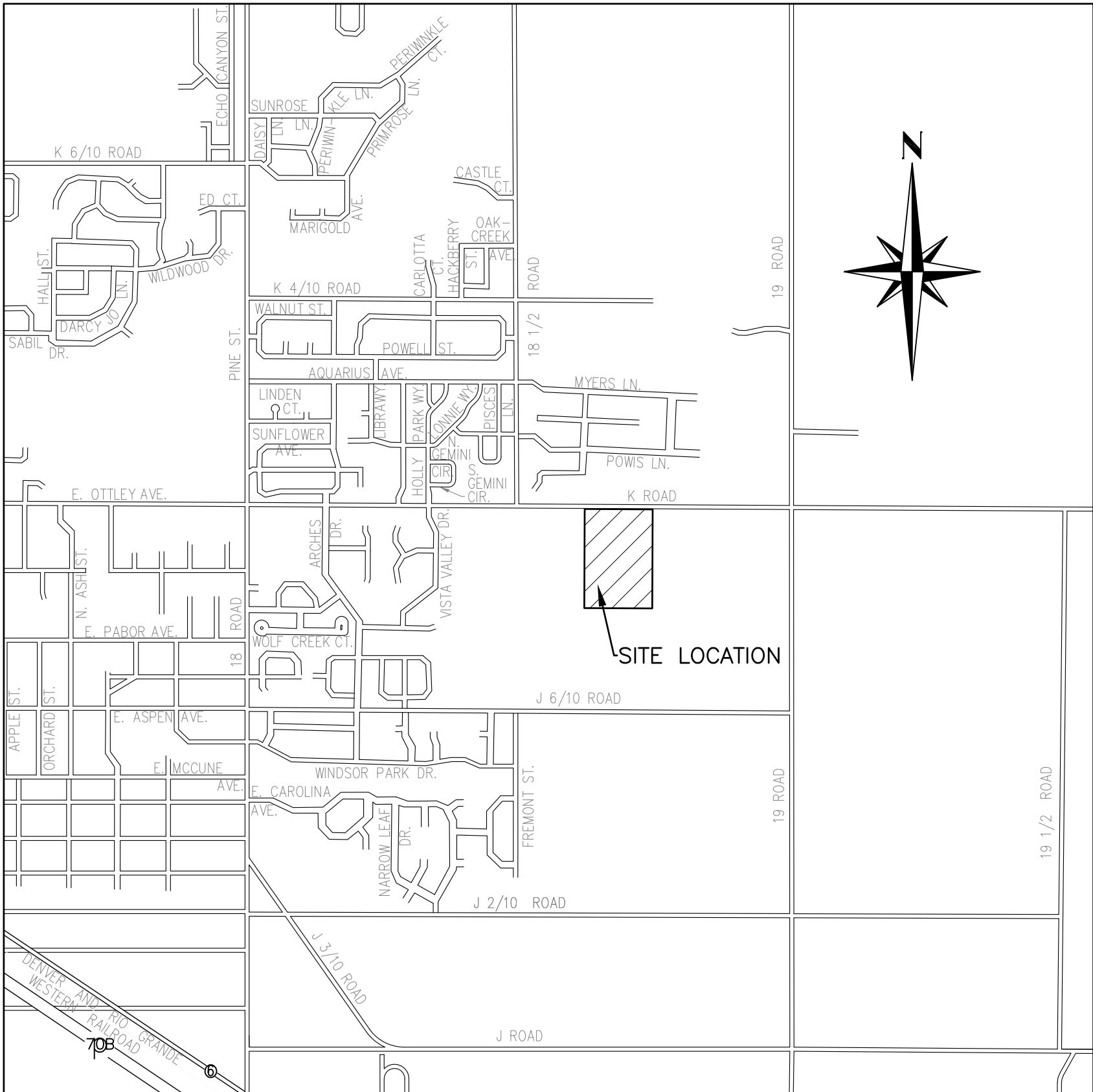
Margaret Sell, City Clerk

Joel Kincaid, Mayor

Exhibit A

ANNEXATION

SITUATED IN THE NW¼ NE¼ SECTION 16
TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE UTE MERIDIAN
COUNTY OF MESA, STATE OF COLORADO





**PLANNING & DEVELOPMENT DEPARTMENT
STAFF REPORT
DECEMBER 12, 2023**

Application #: 2023-34
Project Name: 1873 K Road Rezone
Application: Rezone
Property Owner: Hays Development LLC
Representative: Griffin Design and Construction, LLC
Location: 1873 K Road
Zone: Currently zoned Agricultural, Forestry and Transitional (AFT-County zoning)
Request: This is a request for approval to zone of approximately 14.52 acres to Community Residential (CR).

PROJECT DESCRIPTION:

This is a request for approval to zone approximately 14.52 acres of property to Community Residential (CR). The subject property is currently zoned Agricultural, Forestry and Transitional (AFT), which is a Mesa County zoning designation.

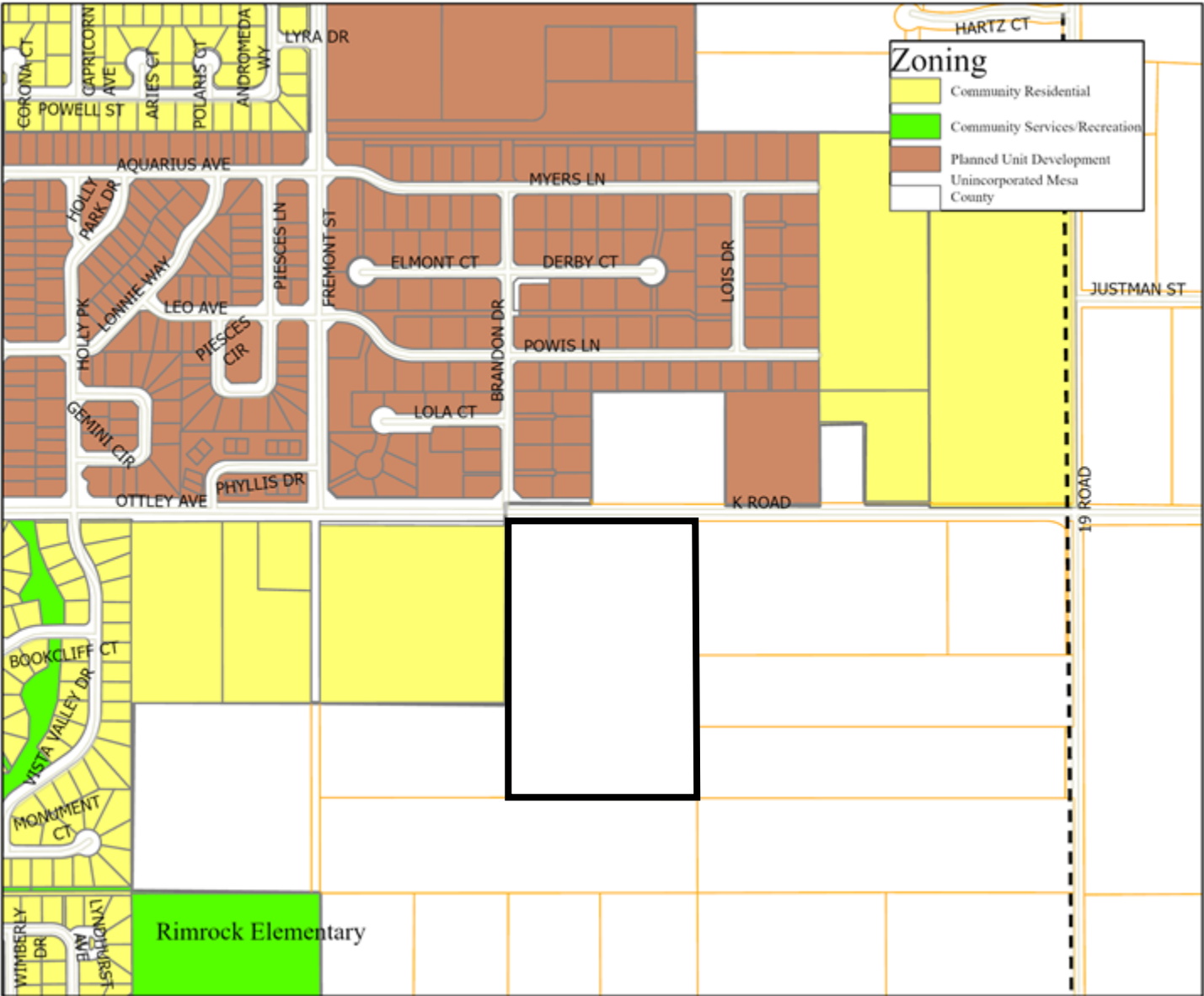
In addition to this rezoning application, the property owner has also submitted an annexation application. Typically, annexation applications are accompanied by a rezone application and can run concurrently through the public hearing process.

The applicant is requesting a Community Residential (CR) zone. The first step in the process to zone a property outside the city limits, is annexation. Once the subject property has been annexed into the City Limits, zoning the property must take place within 90 days in accordance with Section 17.17.080 of the Land Use Code and Colorado Revised Statutes (CRS) Section 31-12-115 (2).

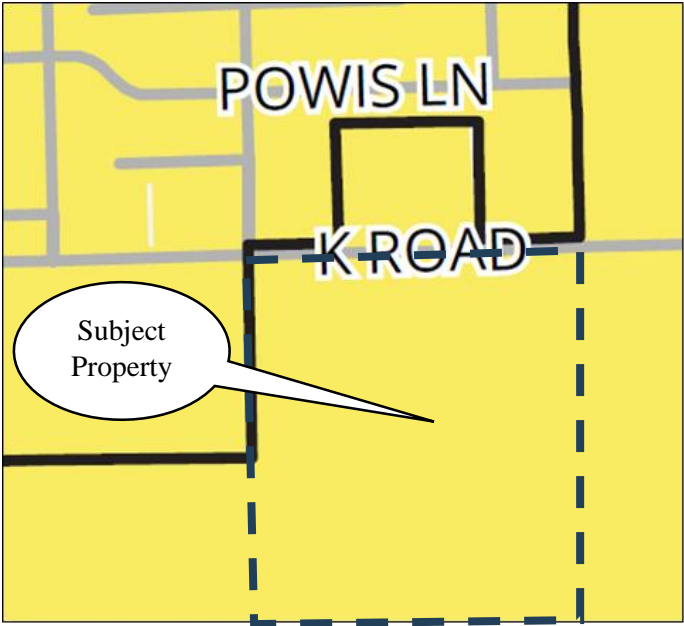
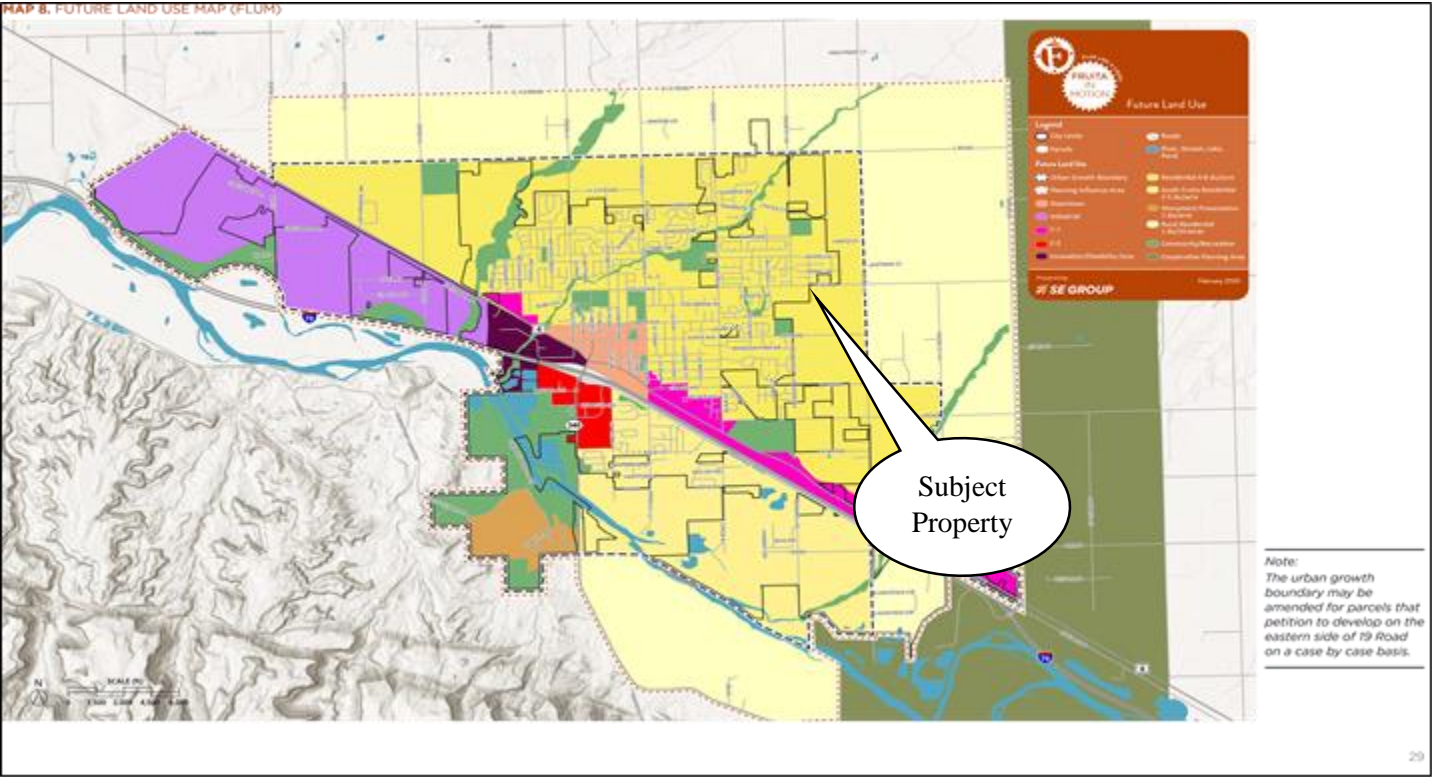
The area in which the subject property is located is supported to have a Community Residential zoning classification as shown on the Future Land Use Map within the City’s Fruita In Motion: Plan Like a Local Comprehensive Plan (Master Plan). The Land Use Code states that the *“The purpose of the CR zone is to allow for moderate density detached single-family residential neighborhoods with the inclusion of other housing types such as attached dwelling units (e.g., apartments and townhouses). Innovative neighborhood design is encouraged in this zone district to provide opportunities for housing diversity. This area is served by public utility infrastructure and is appropriate for density of 4-8 du per acre.”*

SURROUNDING LAND USES AND ZONING:

Surrounding land uses are primarily single family detached residential. The Brandon Estates Subdivision is located to the north, Vista Valley Subdivision to the west, and Rimrock Elementary to the south.



FUTURE LAND USE MAP (FLUM)



2022 AERIAL PHOTOGRAPH



REVIEW OF APPLICABLE LAND USE CODE REQUIREMENTS:

SECTION 17.09.070 AMENDMENT TO OFFICIAL ZONING MAP (REZONING)

- A. **Applicability and Procedures.** The City Council may amend the number, shape, or boundaries of any zone, removing any property from one zone and adding it to another zone, only after recommendation of the Planning Commission. An amendment to the Official Zoning Map may be initiated by the owner of any property for which a rezoning is sought, or upon application of City Council.

- B. **Approval Criteria.** The Official Zoning Map may be amended when the following findings are made:
 - 1. **The proposed amendment is compatible with surrounding land uses, pursuant to Section 17.05.080 (C), and is consistent with the city's goals, policies and Master Plan; and**

The purpose of this Section is to provide a fair and consistent manner in which to consider compatibility within the overall context of the Fruita Master Plan, existing adjacent land uses, applicable zoning district requirements, and other city codes and regulations. Nothing in this Section shall prevent the City of Fruita from denying a land use application based on relevant Code requirements or taking enforcement action against a property owner where a nuisance or other Code violation occurs.

For all land uses, “compatibility” is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The city decision-making body may consider other uses existing and approved and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between uses.

With regards to compatibility, the zoning of the subject property and anticipated development from a land use perspective should be compatible with foreseeable allowed land uses in the area. This takes into consideration that if surrounding properties were to be incorporated into the city limits, the allowed uses for those parcels would be compatible with the residential land uses.

The Community Residential (CR) zone allows for a density range between 4 and 8 dwelling units per gross acre. The CR zone is also the city’s primary residential

zoning district. Below is a table of Land Uses contained in Section 17.05.090 and shows uses that are allowed (A), conditionally allowed (C), and not allowed (*).

Table 17.05.090 - LAND USE TABLE	
	CR
RESIDENTIAL	
Household Living	
Business Residence	C
Dwelling, Single-Family Attached	A
Dwelling, Single-Family Detached	A
Duplex	A
Dwelling, Multi-Family	A
Manufactured Housing Park (See Chapter 31)	C
Mobile Home Park (See Chapter 31)	C
Manufactured Home (See Chapter 31)	C
Mobile Home (See Chapter 31)	C

The Fruita Comprehensive Plan (a major portion of the city's Master Plan) recommends Community Residential (CR) type zoning for this area. The CR zone is primarily a single-family residential zone. The density (4-8 dwelling units per acre) associated with this zone district should be compatible with future residential development as supported by the Future Land Use Map and supporting documents within the Comprehensive Plan. The Community Residential zone allows 4-6 dwelling units per acre by right. Density Bonuses may be used to increase the density up to 8 dwelling units per acre. Additional features throughout the subdivision (open space, trails, alley access, mix of housing types) would be required through Density Bonuses in order for the density to be increased. The public should expect the density to be somewhere between 58 and 87 (at between 4-6 dwelling units per acre), with a maximum of 116 dwelling units per acre through density bonuses.

This criterion has been met.

- The land to be rezoned was previously zoned in error or the existing zoning is inconsistent with the city's goals, policies and Master Plan; or**

This criterion is not applicable because it has not been given a city zoning designation prior to this request.

- The area for which the amendment is requested has changed substantially such that the proposed zoning better meets the needs of the community; or**

Although there have been changes in the area, this criterion is not applicable because the land is not yet in the Fruita city limits.

4. The amendment is incidental to a comprehensive revision of the city's Official Zoning Map which recognizes a change in conditions; or

The Future Land Use Map and associated Comprehensive Plan was recently amended in early 2020. Although this amendment includes this area, the area had been included in past Master Plans and future land use maps. The city has planned for this area to be included in the city limits. This criterion is not applicable because there is no comprehensive revision of the Official Zoning Map for this area.

5. The zoning amendment is incidental to the annexation of the subject property.

The requested zoning amendment is incidental to the annexation and, as explained above, the requested CR zone is consistent with the city's goals and policies as expressed in the Master Plan.

Based on this information, the requested CR zone meets the approval criteria that must be considered for a rezone (Official Zoning Map amendment).

REVIEW COMMENTS:

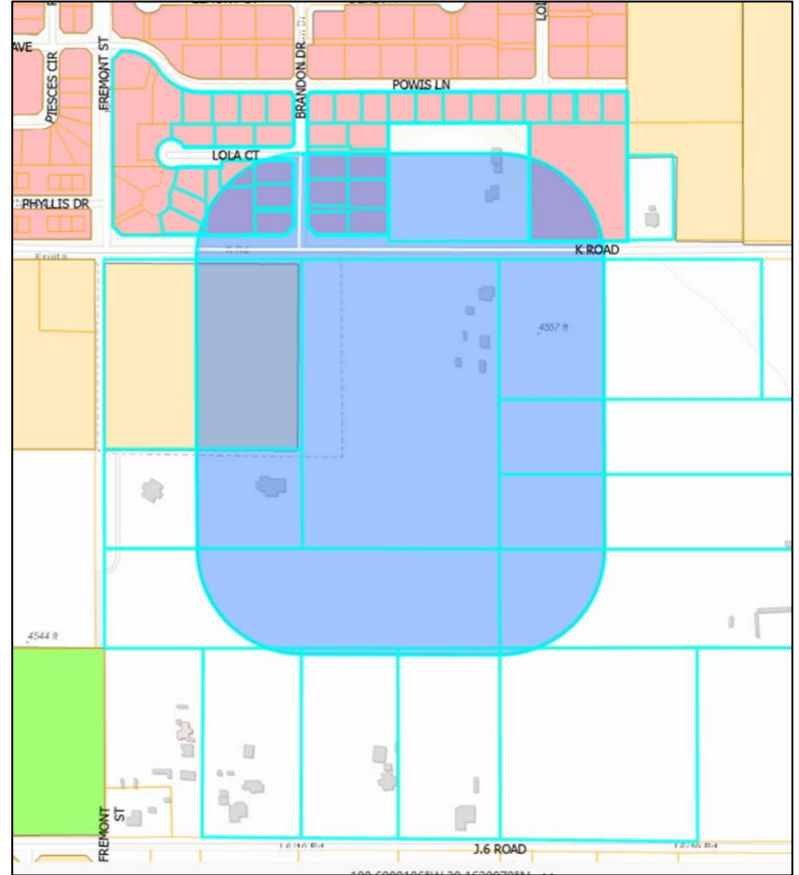
No reviewer expressed any issues with the proposed zoning request.

PUBLIC COMMENTS:

No written public comments have been received by Staff at this time.

LEGAL NOTICE (17.07.040 (E)):

Legal Notice (minimum of 15 days prior to Planning Commission)	
November 22, 2023	Post Cards
November 22, 2023	Sign Posting
November 24, 2023	Legal Ad



STAFF RECOMMENDATION:

Staff recommends that the subject property be zoned Community Residential.

SUGGESTED MOTION (PLANNING COMMISSION):

Mr. Chair, I move to recommend **approval** of the zone request to Community Residential with no conditions to the Fruita City Council.

FRUITA PLANNING COMMISSION: December 12, 2023

FRUITA CITY COUNCIL: January 16, 2024 and February 6, 2024

Mr. Dane Griffin, Griffin Design and Construction, spoke on behalf of the current and future owner of 1873 K Road. He stated that it meets or can meet the criteria for annexation and rezone. He said that he appreciated their consideration.

Commissioner Biddle opened the meeting to public comment. There were none. He closed public comment and opened the meeting to Commissioner discussion.

Commissioner Hummel said that the annexation seemed to be a good fit as per the Land Use Code. He talked about the 1/6th contiguity and that the property could be serviced by utilities, police department, and fire department. He thanked Staff for the report. It made it clear to him that it was a simple application.

Commissioner Hearn asked if there was a change to the code? Are annexations and rezones required to have a public meeting?

Mr. Hemphill responded that annexations and zoning were required to have a public hearing. If a subdivision were to happen once the annexation has been finished that is an administrative process currently with a call-up option to the council.

Commissioner Hearn asked if there was a public meeting?

Mr. Hemphill asked if she meant a neighborhood meeting.

Commissioner Hearn said yes.

Mr. Hemphill stated that it was an optional choice. He said that the contiguity was so close with the urbanized development to the north it made sense to have the neighborhood meeting as a public hearing.

Commissioner Hearn thanked him.

Commissioner Biddle said it was a clean application and presentation.

COMMISSIONER HEARN MOVED THAT THEY RECOMMEND APPROVAL TO THE CITY COUNCIL THE APPLICATION 2023-33 1873 K ROAD ANNEXATION WITH THE CONDITION THAT ALL REVIEW COMMENTS AND ISSUES IDENTIFIED IN THE STAFF REPORT ADEQUATELY ADDRESS OR INCLUDED WITH THE ANNEXATION ORDINANCE

COMMISSIONER HUMMEL SECONDED THE MOTION

MOTION PASSED 7-0

Application #:	2023-34
Application Name:	1873 K Road
Application Type:	Rezone

Location: 1873 K Road
 Applicant: Hays Development LLC
 Current Zone: Mesa County Zoning AFT
 Description: This is a request to rezone approximately 14.5 acres from Mesa County Zoning AFT to Community Residential (CR).

Mr. Henry Hemphill gave the Staff presentation with the previous application.

Commissioner Biddle opened the meeting to public comment for application 2023-34 1873 K Road Rezone. There were no public comments. He closed public comment and opened to Commissioner discussion.

Commissioner Biddle stated that it was a very clean application.

COMMISSIONER FABULA MOVED TO APPROVE THE REZONE REQUEST FOR COMMUNITY RESIDENTIAL WITH NO CONDITIONS TO THE FRUITA CITY COUNCIL

COMMISSIONER MULDER SECONDED THE MOTION

MOTION PASSED 7-0

Application #: 2023-31
 Project Name: Wildcat Residences
 Application: Site Design Review
 Representative: Wildcat Acquisition LLC
 Zone: PUD – Commercial/Residential
 Location: 1807 Wildcat Avenue
 Description: This is a request for approval of a Site Design Review of two (2) twenty (20) unit apartment buildings and five (5) 5-unit row home apartment buildings for a total of 65 units on approximately 3.7 acres.

Mr. Henry Hemphill gave the Staff presentation.

Slide 1 – Introduction

Slide 2 – PUD Process

- **Concept Plan (optional step) - 17.19.030 (A)**
- This step is optional.
- The Planning Commission and City Council both review the application in a workshop setting.
- Decisions and discussions are non-binding.
- **Preliminary PUD Plan - 17.19.030 (B)**
- This step is required.
- The Planning Commission will make its recommendation to the City Council.



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: SHANNON VASSEN, ASSISTANT CITY MANAGER

DATE: FEBRUARY 6, 2024

AGENDA TEXT: RESOLUTION 2024-03 – PUBLIC HEARING – A Request to Approve an Amendment to the 2024 Annual Budget with Supplemental Appropriations of Funds For Completion Of Capital Projects at the Fruita Community Center Initially Budgeted for in the 2023 Annual Budget, and a Supplemental Appropriation of Funds for the Maple Street Bridge Project.

BACKGROUND

This is a request to amend the 2024 Annual Budget to include reappropriations of unspent funds initially budgeted for capital projects in 2023 but not completed, and an appropriation of funds for the design of the Maple Street Bridge. A summary of this budget amendment is provided in the table accompanied with this cover sheet.

FISCAL IMPACT

This budget amendment will not have net fiscal impact as revenues are available to offset the additional appropriations or were already budgeted for use in the prior year. Additionally, funding from Mesa County will be provided for the Maple Street Bridge appropriation.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The Budget is a financial plan developed for the purpose of allocation resources necessary to implement specific policies and strategies to achieve short and long-term goals established by the City throughout the year. This budget amendment provides for completion of special projects and capital projects already identified for completion and construction.

OPTIONS AVAILABLE TO THE COUNCIL

- Approve the budget amendment with or without amendments.
- Advise staff to reevaluate the budget amendment.

RECOMMENDATION

It is the recommendation of staff that the Council by motion:

ADOPT RESOLUTION 2024-03 AMENDING THE 2024 BUDGET TO APPROPRIATE FUNDS IN THE COMMUNITY CENTER FUND AND THE CAPITAL PROJECTS FUND FOR COMPLETION OF CAPITAL PROJECTS ORIGINALLY INCLUDED IN THE 2023 ANNUAL BUDGET AND APPROVE A SUPPLEMENTAL APPROPRIATION OF FUNDS FOR THE MAPLE STREET BRIDGE PROJECT.

Description	Summary	2022 Reappropriation
Fruita Community Center Fund – Locker Room Title Replacement Project	This is a supplemental appropriation (roll over from 2023) for the retile project at the locker rooms in the Fruita Community Center. This project was initially budgeted during the 2023 fiscal year in the amount of \$100,000, and after a formal purchasing process, a contract was awarded for \$88,000, and there has been one change order since then. There were \$27,000 worth of expenses in 2023, so \$70,000 needs to be appropriated and rolled over for the project.	\$70,000
Fruita Community Center Fund – New WaterSlide	This is a supplemental appropriation request (roll over from 2023) for the design and installation of a new water slide at the Fruita Community Center. This project was initially included in the 2023 Budget in the amount of \$850,000, but after additional design work, has a total cost of \$865,000. Funds are available from the undesignated Fruita Community Center fund balance for this project.	\$850,000
Maple Street Bridge Design – Capital Projects Fund	This is a request to appropriate an additional \$25,000 in the Capital Projects Fund for the design of the Maple Street Bridge. In the 2024 Budget, \$225,000 was budgeted for the design, and after going out to bid, the total project cost will be \$250,000. Funds are available from Mesa County to offset the additional costs.	\$25,000

RESOLUTION 2024-03

A RESOLUTION AMENDING THE 2024 BUDGET WITH SUPPLEMENTAL APPROPRIATIONS OF FUNDS FOR CAPITAL PROJECTS IN THE FRUITA COMMUNITY CENTER FUND AND THE CAPITAL PROJECTS FUND.

WHEREAS, installing a new Waterslide at the Fruita Community Center was initially budgeted for in the 2023 year but was not completed due to various reasons, and funds need to be appropriated for construction in 2024 for the completion of the project, and

WHEREAS, the Locker Room Tile Replacement project at the Fruita Community Center was initially budgeted for in the 2023 year but was not completed due to various reasons, and funds need to be appropriation for completion of the project in 2024, and

WHEREAS, completing the design of the replacement of the Maple Street Bridge was included in the 2024 budget, but after a competitive bid process, there is a funding gap of \$25,000 between the budgeted amount and the low bidder, and

WHEREAS, the City of Fruita will receive funding from Mesa County for the Maple Street Bridge replacement, and that funding can be used for the design costs, and

WHEREAS, pursuant to Article 8.10 of the Fruita City Charter, the City Manager certifies there are sufficient funds available for the supplemental appropriations as noted below.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO AS FOLLOWS:

Section 1: That the 2024 appropriation for the Fruita Community Center Fund is hereby increased by \$920,000 from \$4,330,900 to \$5,250,900 from the following sources for the following uses:

Source of Funds

Community Center Restricted Fund Balance	<u>\$920,000</u>
	\$920,000

Use of Funds

Aquatics Furniture and Equipment	\$850,000
Building Maintenance Construction/Improvements	<u>\$70,000</u>
	\$920,000

Section 2: That the 2024 appropriation for the Capital Projects Fund is hereby increased by \$25,000 from \$10,256,370 to \$10,281,370 from the following sources for the following uses:

Source of Funds

Mesa County Grant	<u>\$25,000</u>
	\$25,000

Use of Funds

Maple Street Bridge Design.....	\$25,000
	<u>\$25,000</u>

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS 6th DAY OF FEBRUARY 2024**

ATTEST:

Cityof Fruita

City Clerk

Joel Kincaid, Mayor



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DAVE KROUSE, CHIEF OF POLICE

DATE: FEBRUARY 6, 2024

AGENDA TEXT: Public Safety Update – *Chief of Police Dave Krouse*

BACKGROUND

Chief Krouse will provide some 2023 end-of-year updates regarding the Police Department.

FISCAL IMPACT

N/A

APPLICABILITY TO CITY GOALS AND OBJECTIVES

N/A

OPTIONS AVAILABLE TO THE COUNCIL

N/A

RECOMMENDATION

This agenda item is for informational purposes only. No action is necessary.



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: Fruita City Council and Mayor

FROM: City Attorney, Mary Elizabeth Gieger & Special Counsel, Kim Crawford

DATE: February 6, 2024

AGENDA TEXT: Ordinance 2024-08 - First Reading - Introduction of an Ordinance authorizing the City Manager to execute a contract with Farm, LLC for its purchase of City property known as 169 S. Mulberry Street, Fruita, Colorado and to execute all documents to perfect the sale and conveyance of the same for public hearing on March 5, 2024

Resolution 2024-04 - A Resolution of the City Council of the City of Fruita, Colorado authorizing the City Manager to execute a contract to buy and sell real estate with Farm LLC for 169 S. Mulberry Street

BACKGROUND

The City of Fruita is the owner of real property described as Lots 12, 13 and 14, Block 13 of the Town of Fruita, Mesa County, Colorado also referred to 169 S. Mulberry Street, Fruita, Colorado 81521.

FARM, LLC has submitted an offer to purchase the Property which offer includes a cash payment and nonmonetary contributions, including the creation and lease of public parking spaces and redevelopment of the Property through agreements with the City, totaling a value of \$640,000.00.

The Council met in executive session on November 7, 2023, to discuss the terms of said offer and direct negotiators.

The Council met in a workshop on January 23, 2024, to receive an update on the conveyance process.

PURPOSE

The intent of Ordinance 2024-08 is to authorize the City Manager to execute the Contract to effect the sale of the Property to FARM LLC, a Colorado limited liability company, and any deeds and other necessary documents to create and lease the public parking spaces and achieve redevelopment of the Property and to convey the Property to FARM LLC, a Colorado limited liability company, for the price and terms described in the Contract attached thereto as **Exhibit A**.

The intent of Resolution 2024-04 is to authorize the City manager to execute a real estate contract to buy and sell real estate to FARM LLC for 169 S. Mulberry. This is to allow FARM LLC to pursue financing for the purchase and redevelopment of the Property. However, the closing and sale is contingent upon whether the Council adopts Ordinance 2024-08 upon second reading, currently scheduled for March 5, 2024.

In addition, the City and FARM LLC will be negotiating the final terms of the development agreement as outlined in Exhibit A to the Contract, which summarizes the non-monetary contributions to the purchase of the Property, including the redevelopment of the Property and creation of public parking. As with any real estate contract, FARM LLC has the right to terminate the contract if it is not satisfied with the title work, cannot procure financing, or is not satisfied with matters discovered through due diligence.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The Fruita in Motion: Plan Like a Local Comprehensive Plan established plan themes that speak to efficient development and a thriving downtown. This transaction would result in the redevelopment of blighted property within the downtown core and the creation and maintenance of additional public parking.

Efficient Development The City of Fruita encourages infill over sprawl and development within the existing city limits and Urban Growth Boundary (UGB). Efficient development reduces the demand for infrastructure and city services, supports community connectivity, and encourages a thriving downtown core.

A Thriving Downtown The City of Fruita supports a thriving downtown with strong local businesses, an inviting streetscape, and events and places that encourage the community to gather. Flexible design standards support creative uses of downtown spaces, and higher-than-existing surrounding residential densities creates a variety of housing units and types for residents to frequent businesses.

The Fruita in Motion: Plan Like a Local Comprehensive Plan contemplates three over all strategies to economic development.

Economic gardening is one of the City’s strategies— This approach recognizes the fact that most job growth comes from the expansion of existing businesses. It also focuses on supporting new business formation and entrepreneurship. It is a “grow from within” strategy that focuses on leveraging unique local strengths and opportunities. Economic gardening also incorporates place-based aspects and therefore has some overlap with a place-based strategy.

OPTIONS AVAILABLE TO THE COUNCIL

ORDINANCE 2024-08

1. PUBLISH A SYNOPSIS OF ORDINANCE 2024-08 AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FARM LLC FOR ITS PURCHASE CITY PROPERTY KNOWN AS 169 S. MULBERRY STREET, FRUITA, COLORADO AND TO EXECUTE ALL DOCUMENTS TO PERFECT THE SALE AND CONVEYANCE OF THE SAME FOR PUBLICATION OF PUBLIC HEARING ON MARCH 5, 2024
2. VOTE NOT TO ADVANCE ORDINANCE 2024-08 TO SECOND READING.

RESOLUTION 2024-04

1. ADOPT RESOLUTION 2024-04 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT TO BUY AND SELL REAL ESTATE WITH FARM LLC FOR 169 S. MULBERRY STREET.
2. DENY RESOLUTION 2024-04 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT TO BUY AND SELL REAL ESTATE WITH FARM LLC FOR 169 S. MULBERRY STREET.

STAFF RECOMMENDATION

PUBLISH A SYNOPSIS OF ORDINANCE 2024-08 - AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FARM LLC FOR ITS PURCHASE OF CITY PROPERTY KNOWN AS 169 S. MULBERRY STREET, FRUITA, COLORADO AND TO EXECUTE ALL DOCUMENTS TO PERFECT THE SALE AND CONVEYANCE OF THE SAME FOR PUBLICATION OF PUBLIC HEARING ON MARCH 5, 2024

ADOPT RESOLUTION 2024-04 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT TO BUY AND SELL REAL ESTATE WITH FARM LLC FOR 169 S. MULBERRY STREET

ORDINANCE 2024-08**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FARM LLC FOR ITS PURCHASE OF CITY PROPERTY KNOWN AS 169 S. MULBERRY STREET, FRUITA, COLORADO AND TO EXECUTE ALL DOCUMENTS TO PERFECT THE SALE AND CONVEYANCE OF THE SAME**

WHEREAS, the City of Fruita is the owner of real property described as Lots 12, 13 and 14, Block 13 of the Town of Fruita, Mesa County, Colorado also referred to 169 S. Mulberry Street, Fruita, Colorado 81521 (the “Property”); and

WHEREAS, FARM LLC has submitted an offer to purchase the Property which offer includes a cash payment and nonmonetary contributions, including the creation and lease of public parking spaces and redevelopment of the Property through agreements with the City, totaling a value of \$640,000.00 (the “Offer”); and

WHEREAS, the City has prepared a counteroffer to the Offer to clarify terms and conditions for the redevelopment and parking agreements (the “Counteroffer”) (the Offer and Counteroffer referred to herein as the “Contract”); and

WHEREAS, pursuant to Section 2.11 of the Fruita City Charter, the Fruita City Council must, by ordinance, authorize the lease or conveyance of real property of the City, and

WHEREAS, it is the intent of this ordinance to authorize the City Manager to execute the Contract to effect the sale of the Property to FARM LLC, a Colorado limited liability company, and any deeds and other necessary documents to create and lease the public parking spaces and achieve redevelopment of the Property and to convey the Property to FARM LLC, a Colorado limited liability company, for the price and terms described in the Contract attached hereto as **Exhibit A**.

NOW, THEREFORE, THE CITY OF FRUITA HEREBY ORDAINS AS FOLLOWS:

Section 1: The above Recitals are true and correct and incorporated herein.

Section 2: The City Manager is hereby authorized to finalize and execute the Contract, any documents necessary to effect a development agreement between the FARM LLC, a Colorado limited liability company, and the City for public parking spaces, including a lease thereof, and redevelopment of the Property, and to convey title to the Property to FARM LLC, a Colorado

limited liability company, for a combination of cash payment and nonmonetary contributions totaling \$640,000.00.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
ON THE 5th DAY OF MARCH, 2024.**

City of Fruita

Mayor Joel Kincaid

ATTEST:

City Clerk

RESOLUTION NO. 4
(Series of 2024)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT TO BUY AND SELL REAL ESTATE WITH FARM LLC FOR 169 S. MULBERRY STREET.

WHEREAS, the City of Fruita is the owner of real property described as Lots 12, 13 and 14, Block 13 of the Town of Fruita, Mesa County, Colorado also referred to 169 S. Mulberry Street, Fruita, Colorado 81521 (the “Property”); and

WHEREAS, FARM LLC, a Colorado limited liability company has submitted an offer to purchase the Property which offer includes a cash payment and nonmonetary contributions, including the creation and lease of public parking spaces and redevelopment of the Property through agreements with the City, totaling a value of \$640,000.00 (the “Offer”); and

WHEREAS, the City has prepared a counteroffer to the Offer to clarify terms and conditions for the redevelopment and parking agreements (the “Counteroffer”); and

WHEREAS, the Offer and Counteroffer, with Exhibit A, constitute the Contract to Buy and Sell Real Estate (“Contract”) and are attached hereto as **Exhibit 1**; and

WHEREAS, in order for FARM LLC to be able obtain financing for the purchase of the Property and completion of the nonmonetary obligations under the Contract and to fulfill the terms of Exhibit A thereto, the Contract must be fully executed; and

WHEREAS, the closing of the Contract and sale of the Property is fully contingent upon Council’s adoption of Ordinance 2024-08 at second reading.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE CITY OF FRUITA, COLORADO:

Section 1. That the City Manager is authorized to execute the Contract attached hereto as Exhibit 1 and any amendments thereto.


INTRODUCED, READ, PASSED, AND ADOPTED at a regular meeting of the City Council of the City of Fruita, Colorado, held on February 6, 2024.

CITY OF FRUITA, COLORADO

By: _____
Joel Kincaid, Mayor

ATTEST:

City Clerk

Chesnick Realty LLC

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. (CBS3-6-23) (Mandatory 1-24)

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 (COMMERCIAL)

☒ **Property with No Residences)**
☐ **Property with Residences-Residential Addendum Attached)**

Date: 1/16/2024

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. FARM, LLC (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):

LOTS 12 AND 13 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS-.28 AC TAX PARCEL # 2697-172-22-029

AND

LOT 14 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS - .11 AC TAX PARCEL # 2697-172-22-030

TITLE COMPANY TO VERIFY LEGAL DESCRIPTION

known as: **169 S Mulberry St, Fruita, CO 81521**

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 – Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions:** lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting

blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler and controls, built-in vacuum systems (including accessories) and garage door openers (including controls). If checked, the following are owned by the Seller and included: ☐ **Solar Panels** ☐ **Water Softeners** ☐ **Security Systems** ☐ **Satellite Systems** (including satellite dishes). Leased items should be listed under § 2.5.7. (Leased Items). 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. Inclusions – Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions**: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

2.5.3. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase Price:

None

2.5.4. Encumbered Inclusions. Any Inclusions owned by Seller (e.g., 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:

None

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

2.5.6. Parking and Storage Facilities. The use or ownership of the following parking facilities: ; and the use or ownership of the following storage facilities:

Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should investigate.

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

None

2.5.8. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

None

The trade fixtures to be conveyed at Closing will be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except . Conveyance will be by bill of sale or other applicable legal instrument.

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

None

2.7. Water Rights/Well Rights.

☐ **2.7.1. Deeded Water Rights.** The following legally described water rights:

None

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

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

None

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

☐ **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:

None

116 **2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2. (Other
117 Relating to Water), § 2.7.3. (Well Rights), or § 2.7.4. (Water Stock Certificates), Seller agrees to con
118 rights to Buyer by executing the applicable legal instrument at Closing.

Section 8, Item B.

119 **2.7.6. Water Rights Review.** Buyer ☐ Does ☒ Does Not have a Right to Terminate if
120 examination of the Water Rights is unsatisfactory to Buyer on or before the **Water Rights Examination**
121 **Deadline.**

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

124 **3.1. Dates and Deadlines.**

Item No.	Reference	Event	Date or Deadline
1	§ 3	Time of Day Deadline	
2	§ 4	Alternative Earnest Money Deadline	2/9/2024 Friday
		Title	
3	§ 8	Record Title Deadline (and Tax Certificate)	2/19/2024 Monday
4	§ 8	Record Title Objection Deadline	2/23/2024 Friday
5	§ 8	Off-Record Title Deadline	2/19/2024 Monday
6	§ 8	Off-Record Title Objection Deadline	2/23/2024 Friday
7	§ 8	Title Resolution Deadline	2/29/2024 Thursday
8	§ 8	Third Party Right to Purchase/Approve Deadline	
		Owners' Association	
9	§ 7	Association Documents Deadline	
10	§ 7	Association Documents Termination Deadline	
		Seller's Disclosures	
11	§ 10	Seller's Property Disclosure Deadline	
12	§ 10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	
		Loan and Credit	
13	§ 5	New Loan Application Deadline	
14	§ 5	New Loan Terms Deadline	
15	§ 5	New Loan Availability Deadline	
16	§ 5	Buyer's Credit Information Deadline	
17	§ 5	Disapproval of Buyer's Credit Information Deadline	
18	§ 5	Existing Loan Deadline	
19	§ 5	Existing Loan Termination Deadline	
20	§ 5	Loan Transfer Approval Deadline	
21	§ 4	Seller or Private Financing Deadline	
		Appraisal	
22	§ 6	Appraisal Deadline	
23	§ 6	Appraisal Objection Deadline	
24	§ 6	Appraisal Resolution Deadline	
		Survey	
25	§ 9	New ILC or New Survey Deadline	2/19/2024 Monday
26	§ 9	New ILC or New Survey Objection Deadline	2/26/2024 Monday

174	27	§ 9	New ILC or New Survey Resolution Deadline	2/29/2024	Section 8, Item B.
175			Inspection and Due diligence		
176					
177	28	§ 2	Water Rights Examination Deadline		
178	29	§ 8	Mineral Rights Examination Deadline		
179	30	§ 10	Inspection Termination Deadline	4/12/2024	Friday
180	31	§ 10	Inspection Objection Deadline	4/12/2024	Friday
181	32	§ 10	Inspection Resolution Deadline	4/16/2024	Tuesday
182	33	§ 10	Property Insurance Termination Deadline	3/22/2024	Friday
183	34	§ 10	Due Diligence Documents Delivery Deadline	2/12/2024	Monday
184	35	§ 10	Due Diligence Documents Objection Deadline	4/12/2024	Friday
185	36	§ 10	Due Diligence Documents Resolution Deadline	4/16/2024	Tuesday
186	37	§ 10	Environmental Inspection Termination Deadline	3/22/2024	Friday
187	38	§ 10	ADA Evaluation Termination Deadline		
188	39	§ 10	Conditional Sale Deadline		
189	40	§ 10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)		
190	41	§ 11	Estoppel Statements Deadline		
191	42	§ 11	Estoppel Statements Termination Deadline		
192			Closing and Possession		
193	43	§ 12	Closing Date	4/24/2024	Wednesday
194	44	§ 17	Possession Date	4/24/2024	Wednesday
195	45	§ 17	Possession Time	Delivery of Deed	
196	46	§ 27	Acceptance Deadline Date	2/7/2024	Wednesday
197	47	§ 27	Acceptance Deadline Time		
198	48				
199	49				

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

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

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

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

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

3.3.3. Deadlines. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or

Holiday. Should neither box be checked, the deadline will not be extended.

Section 8, Item B.

4. PURCHASE PRICE AND TERMS.

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

Item No.	Reference	Item	Amount	Amount
1	§ 4.1.	Purchase Price	\$ 230,115.00	
2	§ 4.3.	Earnest Money		\$ 11,505.00
3	§ 4.5.	New Loan		\$
4	§ 4.6.	Assumption Balance		\$
5	§ 4.7.	Private Financing		\$
6	§ 4.7.	Seller Financing		\$
7				\$
8				\$
9	§ 4.4.	Cash at Closing		\$ 218,610.00
10		Total	\$ 230,115.00	\$ 230,115.00

4.2. Seller Concession. At Closing, Seller will credit to Buyer \$0.00 (Seller Concession). The Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

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 Land Title (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 Money due to a Seller Default.

Section 8, Item B.

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.

Section 8, Item B.

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.

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

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

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

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

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

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

Documents);

Section 8, Item B.

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

7.4. Conditional on Buyer’s Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 24.1., on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer’s sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents 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 Association Documents. If Buyer does not receive the Association Documents, 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 Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6. (Third Party Right to Purchase/Approve).

8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

8.1. Evidence of Record Title.

☒ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner’s title insurance policy at Seller’s expense. On or before **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner’s title insurance policy (Title Commitment), ~~in an amount equal to the Purchase Price~~, or if this box is checked, ☐ an **Abstract of Title** 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 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 and Metropolitan Districts. Intentionally Deleted

8.5. Tax Certificate. A tax certificate paid for by ☒ Seller ☐ Buyer, for the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the content of the Tax Certificate 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 content of the Tax Certificate 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 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. (Tax Certificate) 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 Deadlin**

Section 8, Item B.

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:

Seller to provide an updated copy of the Improvement Survey dated 04/05/2023. Improvement survey by QED is acceptable

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 **Agent** 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 AND DUE DILIGENCE.

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 **Faults.**”

Section 8, Item B.

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

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

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

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

10.6. Due Diligence.

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

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

None

10.6.1.2. Leased Items Documents. If any lease of personal property (§ 2.5.7., Leased Items) will be transferred to Buyer at Closing, Seller agrees to deliver copies of the leases and information pertaining to the personal property to Buyer on or before **Due Diligence Documents Delivery Deadline**. Buyer ☐ **Will** ☒ **Will Not** assume the Seller’s obligations under such leases for the Leased Items (§ 2.5.7., Leased Items).

10.6.1.3. Encumbered Inclusions Documents. If any Inclusions owned by Seller encumbered pursuant to § 2.5.4. (Encumbered Inclusions) above, Seller agrees to deliver copies of evidence of debt, security and any other documents creating the encumbrance to Buyer on or before **Due Diligence Documents Delivery Deadline**. Buyer ☐ **Will** ☒ **Will Not** assume the debt on the Encumbered Inclusions (§ 2.5.4., Encumbered Inclusions).

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

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

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

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

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

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

☐ **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:
Due Diligence previously preformed by the City of Fruita to be assigned and/ or released to FARM, LLC or assigns.

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).
[Intentionally Deleted - See Residential Addendum if applicable]

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

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

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

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

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

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

12.5. Assignment of Leases. Seller must assign to Buyer all Leases at Closing that will continue after Closing and Buyer must assume Seller's obligations under such Leases. Further, Seller must transfer to Buyer all Leased Items and assign to Buyer such leases for the Leased Items accepted by Buyer pursuant to § 2.5.7. (Leased Items).

13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing: ☒ special warranty deed ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐ deed. Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing.

Unless otherwise specified in § 29 (Additional Provisions), if title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined in §38-30-113(5)(a), C.R.S.

14. PAYMENT OF LIENS AND ENCUMBRANCES. Unless agreed to by Buyer in writing, any amounts

owed on any liens or encumbrances securing a monetary sum against the Property and Inclusions,
any governmental liens for special improvements installed as of the date of Buyer's signature hereon
whether assessed or not, and previous years' taxes, will be paid at or before Closing by Seller from the
proceeds of this transaction or from any other source.

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

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

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

15.3. Association Fees and Required Disbursements. At least fourteen days prior to **Closing Date**, Seller agrees to promptly request that the Closing Company or the Association deliver to Buyer a current Status Letter, if applicable. Any fees associated with or specified in the Status Letter will be paid as follows:

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 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**, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or ☐ **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 re
prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds a
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.

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 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, failure to perform any replacements or repairs required under this Contract or failure to timely disclose any known adverse material facts, Seller remains liable for any such failures to perform under this Contract after Closing. Buyer's rights to pursue the Seller for Seller's failure to perform under this Contract are reserved and survive Closing.

21. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

22. MEDIATION. If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 26). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This Section will not alter any date in this Contract, unless otherwise agreed.

23. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 22 (Mediation). This Section will survive cancellation or termination of this Contract.

24. TERMINATION.

24.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to

Terminate), provided such written notice was received on or before the applicable deadline specified in the Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

24.2. Effect of Termination. In the event this Contract is terminated, and all Earnest Money received hereunder is timely returned to Buyer, the parties are relieved of all obligations hereunder, subject to §§ 10.4. and 21.

25. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by 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 and Due Diligence**.

ADDITIONAL PROVISIONS AND ATTACHMENTS

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

1. Buyer has the right to assign this contract to a related party at any point up to 3 days before closing.
2. Buyer and Seller acknowledge that the value of the Property is \$640,000.00 and that non-monetary consideration, as outlined in the Development Agreement Terms of Exhibit A, will be exchanged between Buyer and Seller for the difference between the Purchase Price and value of the Property. Title Insurance shall be issued for the full value of the Property, in the amount of \$640,000.00.
3. Seller and Buyer to split the cost of the title insurance and closing costs equally.
4. Sale of said property is contingent upon approval of City Council.
5. In the event dates need to be extended, both parties agree to extend not to exceed 60 days.

30. OTHER DOCUMENTS.

- 30.1. Documents Part of Contract.** The following documents are a part of this Contract:
Development Agreement Terms Exhibit A
- 30.2. Documents Not Part of Contract.** The following documents have been provided but are not a part of this Contract:

Signatures

Alleghany Meadows, Member Date: 1/16/2024
Buyer: **FARM, LLC**
By: Alleghany Meadows, Member

Gavin Brooke, Member Date: 1/16/2024
Buyer: **FARM, LLC**
By: Gavin Brooke, Member

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

_____ Date: _____

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

Section 8, Item B.

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 \$1,000.00.**

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: **1/16/2024**

Broker's Name: **Lori Chesnick**

Broker's License #: **ER1320802**

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

Phone No.: **970-858-8238**

Fax No.: **970-858-8266**

Email Address: **lori@chesnickrealtyllc.com**

B. Broker Working with Seller

Section 8, Item B.

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 Seller as a ☐ **Seller's Agent** ☒ **Transaction-Broker** in this transaction.

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

Brokerage Firm's compensation or commission is to be paid by ☒ **Seller** ☐ **Buyer** ☐ **Other** **\$1,000.00.**

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**

Broker:



Date: **1/16/2024**

Broker's License #: **ER1320802**

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

Phone No.: **970-858-8238**

Fax No.: **970-858-8266**

Email Address: **lori@chesnickrealtyllc.com**

CBS3-6-23. CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

CTM eContracts - ©2024 MRI Software LLC - All Rights Reserved



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

Section 8, Item B.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CP40-6-21) (Mandatory 1-22)

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

COUNTERPROPOSAL

Date: 1/25/2024

1. This Counterproposal supersedes and replaces any previous counterproposal. This Counterproposal amends the proposed contract dated 1/16/2024 (Contract) between **City of Fruita** (Seller) and **FARM, LLC** (Buyer) relating to the sale and purchase of the following legally described real estate in the County of **Mesa**, Colorado (insert legal description):

LOTS 12 AND 13 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS-.28 AC
TAX PARCEL # 2697-172-22-029

AND

LOT 14 BLK 13 TOWN OF FRUITA SUB LOCATED IN SEC 17 1N 2W UM RECD 7/23/1884 RN-1968 MESA CO RECDS - .11 AC
TAX PARCEL # 2697-172-22-030

TITLE COMPANY TO VERIFY LEGAL DESCRIPTION

known as: **169 S Mulberry St, Fruita, CO 81521** (Property).

NOTE: If the table is omitted, or if any item is left blank or is marked in the "No Change" column, it means no change to the corresponding provision of the Contract. If any item is marked in the "Deleted" column, it means that the corresponding provision of the Contract to which reference is made is deleted.

2. **§ 3.1. Dates and Deadlines.** [Note: This table may be omitted if inapplicable.]

Item No.	Reference	Event	Date or Deadline		No Change	Deleted
1	§ 3	Time of Day Deadline				
2	§ 3	Alternative Earnest Money Deadline				
		Title				
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				
		Owners' Association				
9	§ 7	Association Documents Deadline				
10	§ 7	Association Documents Termination Deadline				
		Seller's Disclosures				
11	§ 10	Seller's Property Disclosure Deadline				
12	§ 10	Lead-Based Paint Disclosure Deadline				
		Loan and Credit				
13	§ 5	New Loan Application Deadline				
14	§ 5	New Loan Terms Deadline				
15	§ 5	New Loan Availability Deadline				
16	§ 5	Buyer's Credit Information Deadline				
17	§ 5	Disapproval of Buyer's Credit Information Deadline				

18	§ 5	Existing Loan Deadline				
19	§ 5	Existing Loan Termination Deadline				
20	§ 5	Loan Transfer Approval Deadline				
21	§ 4	Seller or Private Financing Deadline				
Appraisal						
22	§ 6	Appraisal Deadline				
23	§ 6	Appraisal Objection Deadline				
24	§ 6	Appraisal Resolution Deadline				
Survey						
25	§ 9	New ILC or New Survey Deadline				
26	§ 9	New ILC or New Survey Objection Deadline				
27	§ 9	New ILC or New Survey Resolution Deadline				
Inspection and Due Diligence						
28	§ 2	Water Rights Examination Deadline				
29	§ 8	Mineral Rights Examination Deadline				
30	§ 10	Inspection Termination Deadline	3/22/2024	Friday		
31	§ 10	Inspection Objection Deadline	3/22/2024	Friday		
32	§ 10	Inspection Resolution Deadline	3/29/2024	Friday		
33	§ 10	Property Insurance Termination Deadline				
34	§ 10	Due Diligence Documents Delivery Deadline				
35	§ 10	Due Diligence Documents Objection Deadline				
36	§ 10	Due Diligence Documents Resolution Deadline				
37	§ 10	Environmental Inspection Objection Deadline (CBS2, 3, 4)	3/29/2024	Friday		
38	§ 10	ADA Evaluation Termination Deadline (CBS2, 3, 4)				
39	§ 10	Conditional Sale Deadline				
40	§ 10	Lead-Based Paint Termination Deadline				
41	§ 11	Estoppel Statements Deadline (CBS2, 3, 4)				
42	§ 11	Estoppel Statements Termination Deadline (CBS2,3,4)				
Closing and Possession						
43	§ 12	Closing Date				
44	§ 17	Possession Date				
45	§ 17	Possession Time				
46						
47						

Section 8, Item B.

3. § 4. PURCHASE PRICE AND TERMS. [Note: This table may be deleted if inapplicable.]

The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$640,000.00	
2	§ 4.3	Earnest Money		\$11,505.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Private Financing		
6	§ 4.7	Seller Financing		
7		Nonmonetary Contribution (ExA)		\$409,885.00
8				
9	§ 4.4	Cash at Closing		\$218,610.00
10		TOTAL	\$640,000.00	\$640,000.00

4. ATTACHMENTS. The following are a part of this Counterproposal:

Note: The following documents have been provided but are **not** a part of this Counterproposal:

5. OTHER CHANGES.

Regarding Section 8.1.1. Title Insurance: Strike-through is removed. Title insurance will be provided based on the purchase price.
Regarding Section 9.1.2. Seller will provide copy of the Improvement Survey dated 4/5/23.
Regarding Section 10.6.1.4., Other Documents. Only box to be checked. 10.6.1.4.1 City is providing the documents that they have: Seller's Disclosures to Buyer: Appraisal, demolition estimate quote, Phase 1 and 2 environmental assessments, asbestos inspection report, 4/5/23 improvement survey plat.
Regarding Section 16.1.1. Taxes. Does not apply. Property is currently Tax Exempt.
Regarding Section 29. Additional Provisions:
2. Deleted.
3. Deleted.
4. Amended - Sale of property contingent upon approval by City Council and adoption of ordinance authorizing the sale and conveyance of the property.

6. ACCEPTANCE DEADLINE. This Counterproposal expires unless accepted in writing by Seller and Buyer as evidenced by their signatures below and the offering party to this document receives notice of such acceptance on or before 02/05/2024.

 Date Time

If accepted, the Contract, as amended by this Counterproposal, will become a contract between Seller and Buyer. All other terms and conditions of the Contract remain the same.

 Date: _____

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

Seller: _____ Date: _____

Alleghany Meadows, Member
 _____ Date: 1/30/2024
 Buyer: **FARM, LLC**
By: Alleghany Meadows, Member

Gavin Brooke, Member
 _____ Date: 1/31/2024
 Buyer: **FARM, LLC**
By: Gavin Brooke, Member

Note: When this Counterproposal form is used, the Contract is **not** to be signed by the party initiating this Counterproposal. Brokers must complete and sign the Broker's Acknowledgments and Compensation Disclosure portion of the Contract.



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

Section 8, Item B.

EXHIBIT A TERMS FOR DEVELOPMENT AGREEMENT

Date: 1/16/2024

Property Address: **169 S Mulberry St, Fruita, CO 81521**

EXHIBIT A

At Closing, the Buyer and the City will enter into a Development Agreement including at least the general terms outlined in this Exhibit A.

Buyer and Seller agree to negotiate in good faith and enter into a Development Agreement for the Property on or before March 22, 2024, which shall include all material terms contained herein. If no Development Agreement is entered into on or before March 22, 2024, either party shall have the right to terminate under § 24 of the Contract.

I. BUILDING REDVELOPMENT

A. Buyer shall obtain a letter of credit on or before March 22, 2024, that can be drawn on by the City to complete the improvements to the Powder Coating Building in the event that the Buyer defaults in its obligations to redevelop the Powder Coating Building under the Parking and Redevelopment Agreement.

B. Buyer will provide to Seller on or before March 22, 2024 an estimate of costs associated with the redevelopment of the Powder Coating Building in accordance with subsection C, below.

C. Buyer, at its sole expense, will redevelop the Power Coating Building, which redevelopment shall include:

- a. Removal of the jumble of lean-to additions along the alley;**
- b. A new metal roof on the original building;**
- c. Replacement of the skylights;**
- d. New garage doors to Mulberry and McCune;**
- e. New exterior lighting; and**
- f. New exterior paint.**

D. Upon Buyer's obtainment of a certificate of occupancy for the redeveloped Powder Coating Building, and the seal coating and striping of the 20 initial parking spaces, as described in Section II(A)(a), below, the City will grant to Buyer use of the City's right of way along McCune for parking, patio, and/or outdoor improvements.

II. PARKING AGREEMENT

A., a. and b. are replaced with:

At closing, the Buyer and the City shall enter into a lease agreement whereby the City lease 20 parking spaces for public use on the Property which Buyer shall maintain with seal coating, striping and parking bumpers. On or before the end of the lease, Buyer shall permanently dedicate 20 public parking spaces to the City on either the Property as

described in the lease or an any property owned by the Buyer on Mulberry Street be Aspen Avenue and E. McCune Avenue in a location approved by the City Manager, in writing, which approval shall not be unreasonably withheld.

Section 8, Item B.

c. Upon the dedication of the permanent location for the 20 public parking spaces, the parking area shall be improved and maintained, at the sole expense of the City, to meet the then-current parking standards for the City of Fruita. These improvements shall include paving, lighting and landscaping.

d. City shall at all times carry insurance for all public parking spaces described and designated herein at its cost.

e. Additional parking will not be required of the Buyer as a result of the redevelopment.

f. The 24 existing parking spaces north of the FARM property and south of E. Aspen Avenue shall remain without private signage and available for use as public parking until the dedication of the 20 permanent public parking spaces is completed. Buyer shall be responsible for all costs and maintenance obligations of the 24 existing parking spaces described in this subsection.

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

Alleghany Meadows, Member

Date: **1/30/2024**
Buyer: **FARM, LLC**
By: Alleghany Meadows, Member

Gavin Brooke, Member

Date: **1/31/2024**
Buyer: **FARM, LLC**
By: Gavin Brooke, Member

CTM eContracts - ©2024 MRI Software LLC - All Rights Reserved



AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: MARGARET SELL, FINANCE DIRECTOR/CITY CLERK

DATE: FEBRUARY 6, 2024

AGENDA TEXT: ELECTION COMMISSION APPOINTMENTS – A request to ratify the appointment of Emma-Leigh Larsen and Stephen Ryken to the Election Commission

BACKGROUND

ELECTION COMMISSION

Section 6.03.02 of the Fruita City Charter sets forth requirements for the appointment of an Election Commission by the Mayor. The Election Commission shall consist of the City Clerk who shall be Chairman and two other members at large. At large members shall not be city officers, employees, candidates or nominees for elective city office. These two (2) members shall be appointed by the Mayor with ratification from the City Council for a term of two (2) years.

Powers and duties of the Election Commission include the following:

- Establish precincts
- Appoint Election Judges and Clerks for each Precinct
- Adopt reasonable rules and regulations not in conflict with the Constitution and Statutes of the State of Colorado, this Charter, and ordinances of the City of Fruita.
- In the event of a tie vote, the Election Commission shall determine by lot the person or persons who shall be elected.

Attached are Board and Commission applications from Emma-Leigh Larsen and Stephen Ryken for your information and review. The term of appointment will be from February 15, 2024 thru February 15, 2026.

FISCAL IMPACT

None. Board and Commissions are unpaid volunteers for the City of Fruita.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The appointment of an independent Election Commission helps to ensure fairness and proper conduct of elections.

OPTIONS AVAILABLE TO THE COUNCIL

- Ratify the appointments recommended by the Mayor

- Instruct staff to publish notice of vacancy and accept applications for the Election Commission

RECOMMENDATION

It is the recommendation of Mayor Kincaid that the following appointments be ratified:

APPOINT EMMA-LEIGH LARSEN AND STEPHEN RYKEN TO THE ELECTION COMMISSION FOR A TWO-YEAR TERM (FEBRUARY 15, 2024 THRU FEBRUARY 15, 2025)



**CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION**

BOARD OR COMMISSION: Election Commission

NAME: Emma-Leigh Larsen

MAILING ADDRESS: 423 Oakwood Ave.

Fruita CO 81521

RESIDENCE ADDRESS: City State Zip
423 Oakwood Ave. CO 81521

PHONE NUMBER: cell 856-287-4825 970-254-7050

Home Work

E-MAIL ADDRESS: emmaleighlarsen23@gmail.com

How long have you been a resident of Fruita? 15

Occupation/Employer: Mesa County Valley School District 51

List any volunteer and/or work experience:

Principal of Pomona Elementary School 2006-2018
Principal of Monument Ridge Elementary 2020-present
HOA President Elmwood Estates in Fruita 2009-2016
HOA Officer The Pinyons on Log Hill 2018-present
New Administrator Induction Coordinator

Are you presently serving on a board or commission? If so, which one(s)?

N/A

Why do you want to be a member of this board or commission?

I am interested in being more involved in the Fruita community.

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

I have worked in education for 35 years as both a teacher and school administrator. I am organized and strive to develop strong working relationships, both personally and professionally. I am dependable and viewed as a leader in the school district. I am fair and honest in all of my interactions. Most recently, I was charged with helping to design, staff and open Monument Ridge Elementary School.

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings? ☒ Yes ☐ No
Are you committed to serving an entire term? ☒ Yes ☐ No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

N/A

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

BA History from Rutgers University
MEd Educational Administration Rutgers University
CO Teaching License
CO Principal License
CO Superintendent License Eligible

Additional information or references you believe may be helpful in considering your application.

You are welcome to contact any central office administrator in MCVSD51 or any staff at Monument Ridge Elementary to verify my work experience or qualifications for this position.

Signature Emma-Leigh P. Larsen Date 2-11-22

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES
Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.

Emma-Leigh P. Larsen

423 Oakwood Avenue
 Fruita, Colorado 81521
 856-287-4825

EDUCATION

Rutgers University, New Brunswick, New Jersey
 Ed.M. Educational Administration and Supervision
 Grade Point Average 3.917
 Certification: Principal/Supervisor, 1999

Rutgers University, Camden, New Jersey
 B.A. History
 Elementary Education Certification, 1987

ADMINISTRATIVE EXPERIENCE

Mesa County Valley School District 51
Monument Ridge Elementary School
Elementary School Principal - Gr. PK-5
 August 2020 - present

Responsibilities Include: Assist with the design, build and opening of a new school. Maintain strong staff and community relations, create and promote a safe and supportive learning environment, provide structure and support for professional learning communities, model learning, provide opportunities to analyze data for the purpose of improving student growth and achievement, supervise staff, coordinate school wide programs and activities, facilitate building committees, provide opportunities for school wide intervention programs, implement and monitor the components of the D51 Learning Model and carry out the policies set forth by the Board of Education and Superintendent.

District Committees: Elementary Reading Vertical Alignment Team, Administrative Evaluation Steering Committee, Water Festival District Representative, Report Card Committee, Gifted and Talented Committee, Student Support Model Committee, Professional Learning Committee.

Pomona Elementary School
Elementary School Principal - Gr. K-5
 August 2006 - July 2019

Winslow Township Public Schools
Upper Elementary School Principal - Gr. 3-5 (650 students)
 July 2002 - July 2006
Elementary School Principal - Gr. PK-2 (400 students)
 August 2000 - July 2002

West Deptford Township Public Schools
Elementary School Principal - Gr. K-4 (525 students)
 July 1999 - 2000
Middle School Assistant Principal - Gr. 5-8 (1000 students)
 July 1998 - July 1999

TEACHING EXPERIENCE

Waterford Elementary School
 Waterford, NJ 08089
Teacher - Grades 5, 6
 1987 - 1998



FRUITA
COLORADO

CITY OF FRUITA
BOARDS AND COMMISSIONS
MEMBERSHIP APPLICATION

BOARD OR COMMISSION: ELECTION COMMISSION

NAME: Stephen Ryken

MAILING ADDRESS: 395 Oakwood Av
Fruita, Co 81521

RESIDENCE ADDRESS: 395 Oakwood Av CO 81521

PHONE NUMBER: 970-270-3910 970-242-7491
Home Work

E-MAIL ADDRESS: SRYKEN@utewater.org

How long have you been a resident of Fruita? 2010

Occupation/Employer: Ute Water

List any volunteer and/or work experience:

Assistant General Manager at Ute Water

Are you presently serving on a board or commission? If so, which one(s)?

No

Why do you want to be a member of this board or commission?

Help our community

List any abilities, skills, or interests which are applicable to the board or commission for which you are applying.

N/A

City of Fruita
Boards and Commissions Application
Page 2

Are you committed to attending meetings? ☒ Yes ☐ No

Are you committed to serving an entire term? ☒ Yes ☐ No

Please specify any activities which might create serious conflict of interest if you should be appointed to a particular board or commission. (If unsure, please call the City Manager's office at 858-3663)

NONE

List any licenses, certificates or other specialized training applicable to the board or commission for which you are applying.

NONE

Additional information or references you believe may be helpful in considering your application.

NONE

Signature Stephen Ryk Date 2/10/22

All applicants are strongly encouraged to attend a regularly scheduled meeting of the board or commission for which they are applying. Frequent non-attendance may result in termination of the appointment.

ATTACHMENTS TO APPLICATION MUST BE LIMITED TO TWO PAGES

Please feel free to submit a resume along with this application. Application and any attachments should be returned to the Fruita City Council c/o the City Clerk, 325 E. Aspen, Fruita, CO 81521. Although we have indicated the best time to apply for a particular board, we accept applications for any of the boards year-round. Thank you.