

Date: June 25th, 2021

TO: Town of Rico Board of Trustees
FROM: Kari Distefano, Rico Town Manager
SUBJECT: Memo for June 30th meeting

Draft Short Term Rental Ordinance

In an effort to solicit public opinion, in addition to posting this discussion as part of the Board of Trustee’s meeting, I have posted it on the Rico Bulletin Board and sent an email to everyone on my list. Although Alex Wing’s comment about Facebook at the last meeting is well taken, I still find it an effective method of contacting Rico residents. I have included the draft short term rental policy with revisions suggested at the last meeting in this packet to ensure that anyone that wants to review it gets it.

Town Manager Search Committee

Included in this packet are three documents that address the search for a new town manager. They are the “Town Manager Search Criteria” document, the “Rico Town Manager Applicant Requirements” and the “Rico Town Manager Job Description”. The Town Manager search committee will be tasked with reviewing the documents and revising them as needed.

Rico Trail’s Alliance Fund Raiser

The Rico Trail’s Alliance fundraiser is back and scheduled for September 18th. They are applying for liquor license and are requesting permission to use the Town Park.

Consideration of a letter of engagement from Kari Distefano to function as the Rico Town Planner and Special Project Manager

As of Wednesday, June 30, I will have accumulated 168.5 of paid time off (PTO). Back up documentation of my hours is available upon request. Based on a 40-hour work week, I accumulated and used the following:

Year	PTO accumulated	PTO used	Comp Time	Balance
2017	109.5	43.5	48.5	114.5
2018	175.2	169.5	84.5	90.2
2019	175.2	174	65.5	66.7
2020	175.2	140	58	93.2

2021	87.6	143.5	35	-20.9
Totals	547.5	670.5	291.5	168.5

Given that I have agreed to continue as the part-time town manager until a replacement is found, I will likely run out of PTO at the end of July. I am suggesting that July 31st would be my last paycheck and the Town's obligation to paying my insurance would discontinue at that time. I have included in this packet a letter of engagement that covers planning duties and special projects. Whether or not the Town wants to hire me for planning and special projects would be based on the skills of the successful town manager applicant and/or the response to a request for proposals should the town manager lack planning or special project skills.

Consideration of a contract with Ramco Development L.L.C. for the relocation of water meters

While we had three different contractors attend the mandatory site visit for our water meter relocation project, we only had one bidder. Pending approval of this contract and permission of owners, Ramco Development will begin relocating water meters inside homes. We have sent notices and access agreement forms by certified mail to owners, mostly in Silverglance, that have meters that are susceptible to freezing. This project is funded by a grant from the Department of Local Affairs and is scheduled to begin in mid-July.

**TOWN OF RICO
ORDINANCE 2021-0**

AN ORDINANCE OF THE TOWN OF RICO, COLORADO, DEFINING SHORT-TERM RENTAL, REPEALING SECTION 1 OF ORDINANCE 2011-3, REVISING REGULATIONS FOR SHORT-TERM RENTALS IN THE RICO LAND USE CODE ARTICLE II SECTIONS 220 AND 222, PROVIDING FOR LICENSING OF SHORT-TERM RENTALS AND LIMITING THE NUMBER OF SHORT-TERM RENTALS ALLOWED WITHIN THE TOWN OF RICO.

WHEREAS, the Board of Trustees of the Town of Rico (the “Town”) believes it appropriate to define short-term rentals and license their use; and

WHEREAS, due to the COVID-19 pandemic, on-premises food service establishments were closed or limited for indoor dining requiring take out, and other delivery methods;

WHEREAS, the Board of Trustees desires to ensure that short-term rentals are not consuming a disproportionate amount of the Town’s housing supply, especially long-term rental housing; and

WHEREAS, the Board of Trustees desires to allow short-term rental opportunities within the Town of Rico with the resulting economic benefits, potential tourism attraction, and the ability to make one’s property more affordable; and

WHEREAS, the Board of Trustees desires to assure a safe and quality experience for residents, businesses and visitors; and

WHEREAS, the Board of Trustees desires to balance the need for regulations with the cost to the property owner and burden of enforcement to the Town; keep revenue neutral; and

WHEREAS, the Town has the power and authority to make and publish ordinances that are necessary and proper to provide for the safety and preserve the health of the inhabitants of the Town not inconsistent with the laws of the State of Colorado; and

WHEREAS, the Town has made a conscientious effort to plan for specific uses within all zoning districts and to anticipate conflicts between competing land uses, in order to protect the public's health, safety and welfare;

SECTION 1.

SHORT-TERM RENTAL: Rental of all or a portion of a residential dwelling unit for periods of less than 31 days. This definition of short-term rentals excludes hotels, motels, lodges, and bed and breakfasts.

SECTION 2.

Ordinance 2001-3 Section 1 is repealed and Article II, Sections 220 and 222 are amended as follows:

I Short-term Rental Regulations:

1. Intent and Purpose: Establish standards and procedures by which residential short-term rentals can be provided in a manner that protects both the quality of experience and the character of the

Town of Rico. It is the Town of Rico's intent to establish short-term rental regulations to promote a mix of lodging options, support the local economy, while also upholding the integrity of the Town.

2. Permitted Use of short-term rentals.

a. Short-term rentals are allowed in all zoning districts where residential units are a use by right or an approved conditional use. Short-term rentals shall comply with the provisions of this Subsection (I) and shall be licensed by the State of Colorado and the Town of Rico

b. Short-term rentals:

(i) Shall be a single-family dwelling structure; or

(ii) Shall be a single residential unit in structures with mixed uses; or

(iii) Shall be a property with two dwelling structures where the owner may use one of the dwelling structures as a short-term rental if both dwelling structures are owned by a single owner and one dwelling unit is owner occupied.

(iv) Shall not be a multiple family residence or structure as short-term rentals are prohibited in multiple family structures.

3. Performance Standards for short-term rentals

a. The unit being rented, shall be a Dwelling Unit, as defined pursuant Article IX of the Rico Land Use Code and shall not have more than 5 bedrooms, nor be leased or used to any group containing more than 10 people over the age of 18.

b. The unit shall have a minimum of 2 off-street parking spaces available and any additional spaces necessary to accommodate the tenant's vehicles off street.

c. There shall be an owner's agent available to be at the unit within 20 minutes, who is on call full time to manage the property during any period the unit is rented. The name address and phone number of the agent must be kept current on file with the Town and posted in the short-term rental.

d. Adequate trash and recycle containers shall be provided and information on placement for collection shall be provided in the short-term rental.

e. The unit shall be maintained in compliance with applicable Town ordinances and regulations. The rental of residential units as provided herein shall not unreasonably annoy or interfere with the use or enjoyment of public or private property or which constitutes a health or safety hazard.

f. The owner must have current state and Town sales tax licenses, a Town business license at such time the Town has business licensing, and collect and remit sales taxes and lodging taxes.

SECTION 3
Licenses required.

1. Any property owner who rents out a unit on a short-term basis within the Town of Rico shall be required to obtain a short-term rental license (hereinafter a "Short-term Rental license") for each short-term rental unit from the Town of Rico. Such Short-term Rental license and its corresponding number shall be prominently displayed in all advertising of the unit. The cost of such licensing and renewals shall be set by resolution of the Rico Board of Trustees. Short-term Rental licenses are nontransferable, except where upon death the property is transferred to an immediate family member, the Short-term license number may be transferred with the property.
2. All Short-term Rental units, except the Short-term Rental of a single room inside an owner-occupied dwelling unit, are required to have and pass a health, safety and welfare inspection by the Town Building Inspector. This inspection will be completed with the initial and renewal licensing processes.
3. The total number of Short-term Rental licenses in the Town of Rico shall be limited to 10 at any one time. The Short-term Rental of a single room inside an owner-occupied dwelling unit shall not be counted toward the maximum number of licenses to be issued.
4. Short-term Rental licenses shall be issued for a period of two years and subject to biannual renewal (every 2 years). Notwithstanding this two-year term, the Town may determine a more frequent licensing schedule is needed for any particular unit, and the initial term for licensing.

SECTION 4

Licenses fees.

1. The local application and license fees for all Short-term Rental licenses issued, and applications submitted shall be enacted by Rico Board of Trustees Resolution.
2. In addition to the above fees, the applicant/licensee shall reimburse the Town for all out-of-pocket costs incurred during review of the application, or license, including legal fees, consultant fees, postage, notice and publishing costs. The Town shall bill the applicant/licensee upon completion of the application or review process and completion of any conditions thereof. No application or license shall be finally approved until the bill is paid. Each bill shall be overdue 30 days after its date. Bills not paid by the due date shall accrue interest at the rate of 1½ %per month or part thereof. Such fees may be certified to the County Treasurer for collection as delinquent charges or collected in any other lawful manner.
3. The Town Board may revise such amounts by resolution based on costs incurred by the Town in the administration and enforcement of the Short-term Rental Licensing and related provisions.

Section 5

Supplemental Regulations

1. All Dwelling Units, for Short-term Rental licenses issued shall comply with applicable requirements of Town ordinances, including building and zoning regulations.
2. The Rico Board of Trustees shall be the local licensing authority for the Town for Short-term Rental licenses. Applications shall be reviewed and recommended to the Rico Board of Trustees. The Rico Board of Trustees shall act upon all Short-term Rental license applications without hearing.

Section 6
Revocation of License

1. The Town Manager may revoke or suspend a Short-term Rental license. The following shall be prima fade evidence for revocation or suspension of a Short-term Rental license:
 - a. A holder of a Short-term Rental license is violation of the provisions of the permit.
 - b. holder of the Short-term Rental license has violated the rules and regulations for short-term rentals, as established by this Ordinance.
 - c. The holder of the Short-term Rental has failed to remit sales and/or lodging taxes.

2. In the event a licensee wishes to challenge the revocation or a suspension of a license by the Town Manager, they can request, in writing, an administrative hearing before the Town Board within thirty days of the license being revoked or suspended.

3. No license shall be issued to any property owner for whom a license has been revoked, until at least three years has elapsed since revocation.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, COLORADO
that:

TOWEN OF RICO:

By: _____
Barbara Betts, Mayor

ATTEST:

Linda Yellowman, City Clerk

RICO TOWN MANAGER SEARCH CRITERIA
6/2/2021

The Town Board discussed the following criteria for the Town Manager search/hiring process per Colorado's Sunshine law (CRS 24-6-402(3.5)¹ on 6/2/21:

- 1. *Job Search Goals***
 - a. Requirements and Job Description (approved 6/2/21)
 - b. Application deadline 8/12/21 (may be extended by Search Com.)
 - c. Time frame for hiring 2 to 4 months from application deadline (as may be extended by Search Com.)
 - d. Post on Town website²
 - e. Publish as follows (each referring to Town website):
 - Emails to known potential candidates
 - Email announcement via community Mail Chimp list
 - Post at Town Hall and Post Office kiosk
 - CML listing
 - Rico Bulletin Board Facebook page
 - Newspaper classifieds (in 2 papers one for Cortez/Durango area and other for Telluride/Ouray/Montrose area)
 Note: Add should refer to Town website
 - f. Selection procedures:
 - Applicants to submit by email to Town Clerk by application deadline
 - Town Clerk to reply with form letter (sample attached)
 - Town Clerk to forward application materials to Search Comm. members, and to any Town Board of Trustees members who request, by email
 - Search Com. to identify a group of finalists (up to 5)
 - Search Com. to report to Town Board and recommend interview finalists and procedure based on number/type of finalists, budget, etc.
 - Interview procedure to include (i) visit to Rico, (ii) meetings with Town staff and Search comm. members (iii) Town staff input to Town Board; and (iv) Town Board interview of finalists
 - g. Search Com. designee(s) to coordinate/handle communications with applicants, schedule interviews/meetings with Mayor's input

- 2. Public Notice of finalists is required at least 14 days prior to employing a finalist.**

¹ These requirements shall not apply to interim town managers or other town staff positions.

² Town website posting should state salary range salary range (\$70-\$75k plus benefits), housing possible, population, miles of roads

Sample Applicant Response Letter

[insert Town letterhead]

[insert date]

VIA EMAIL ONLY [insert email address]
[insert applicant's name]

Dear [Mr./Ms. insert applicant's name]:

Your application for the Town Manager position has been received. We will be reviewing each application we receive in order to determine who to invite for interviews. We anticipate that we will be getting in touch with qualified candidates during the month of _____. We appreciate your patience, and hope that you can understand our desire to ensure that every applicant receives full consideration.

Sincerely,

Linda Yellowman, Town Clerk

Rico Town Manager Applicant Requirements

Identified at 6/2/21 Town Board of Trustee's special meeting

Requirements:

- College degree or equivalent experience/training or combination thereof.
- Public works (water, sewer, street) experience, including administrative and/or management experience and work plan development/execution.
- Management and budgeting experience in a Colorado political subdivision
- Economic Development and long range planning (preferably including grant research and writing
- Some land use experience in Colorado and familiarity with zoning and land use codes
- Parks and recreation experience, including administrative and/or management experience



**Town of Rico
Town Manager Job Requirements and Description
Updated 6/2021**

Town Manager requirements are intended to be flexible with the understanding that the Town of Rico faces limitations in attracting a pool of qualified potential candidates, including, but not limited to the small local and regional population, limited housing stock, limited funding, etc. Accordingly, many of the requirements listed below are stated in the alternative, and preferences are noted.

Job Title: Town Manager

Reports To: Board of Trustees

Position Classification: Full or Part Time Employee as determined by Board of Trustees, Exempt

Prepared Date: June 8, 2021

Approved Date:

Summary

Performs, directs and coordinates the administration, technical and professional work of the town government in accordance with policies determined by the Board of Trustees by performing the following duties personally or through subordinate supervision:

Essential Duties and Responsibilities include the following. Other duties may be assigned

- Provides leadership and direction in the development of short and long range plans; gathers, interprets, and prepares data for studies, reports and recommendations; coordinates Town activities with other governments.
- Provides professional advice to the Board of Trustees and other Town employees; prepares reports for regular Town Board meetings, makes presentations to boards, commissions, civic groups and the general public.
- Communicates official plans, policies, and procedures to staff and the general public as directed by the Town board and in public news letters
- Grant research and writing.
- Assures that assigned areas of responsibility are performed within budget; performs cost control activities; monitors revenues and expenditures in assigned area to assure sound fiscal control; prepares annual budget; assures effective and efficient use of budgeted funds, personnel, materials, facilities, and time.
- Performs and/or oversees the operation and maintenance of the water plant and distribution system.
- Performs and/or oversees road maintenance.
- Supervises Town staff, maintains harmony among workers and resolves grievances; assists other Town employees in performing duties. Administers Town Personnel policies. Interprets

policies when needed, coordinates activities and evaluates performance of staff, develops job descriptions, etc.

- Performs Town staff performance reviews.
- Prepares a variety of studies, reports and related information for decision-making purposes.
- Ensures Town compliance with all state, federal, local laws and ordinances.
- Advises the Board of Trustees of financial conditions and current and future Town needs.
- Attends all regular and special meetings of the Board of Trustees.
- Recommends for adoption by the Board of Trustees such measures as he or she may deem necessary or expedient.
- Act as building official and works with contract building inspector to process building permits, perform inspections and site measurements.
- Point of contact for emergency management plans.
- Oversees and directs Town Planner and/or coordinates with contract planners.
- Confers and coordinates with contract attorneys, engineers and other contract professionals
- Performs Town Manager duties as specified by state statute and the Home Rule Charter.

Supervisory Responsibilities

Oversees Office of the town employees and contract staff. Carries out supervisory responsibilities in accordance with the Town Board's direction as well as the policies and applicable laws. Responsibilities include planning, assigning, and directing work; appraising and reviewing performance; and resolving problems.

Qualifications To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education / Experience

- College degree or equivalent experience/training or combination thereof.
- Public works (water, sewer, street) experience, including administrative and/or management experience and work plan development/execution.
- Management and budgeting experience in a Colorado political subdivision
- Economic Development and long range planning (preferably including grant research and writing
- Some land use experience in Colorado and familiarity with zoning and land use codes
- Parks and recreation experience, including administrative and/or management experience
- Experience should include personnel management, financial management and public sector management principles, policies and practices; the ability to interpret and apply municipal policies and procedures, Town ordinances and Federal and State statutes. Ability to plan, organize, supervise and inspect the work of professional, technical and support personnel; ability to delegate responsibility. Ability to prepare and present technical and statistical reports; ability to negotiate and resolve disputes effectively; ability to exercise creativity and initiative in resolving Town problems and issues and in carrying out administrative responsibilities. Ability to establish and maintain effective working relationships with employees, Town officials, the business community, the general public and State, Regional and Federal officials. Demonstrated ability to maintain positive relationships with various private and public agencies and individuals as well as deal successfully with the public and other interested groups, which may have differing perspectives and interests. Demonstrated communication (written and oral), interpersonal, and organizational skills. Computer

software experience, specifically spreadsheet, word processing, and accounting systems.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to sit and talk or hear. The employee is occasionally required to stand; walk; use hands to finger, handle, or feel; reach with hands and arms; climb or balance and stoop, kneel, crouch, or crawl. The employee must occasionally lift and/or move up to 100 pounds.

Work Environment

The environmental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this Job, the employee is frequently exposed to moving mechanical parts and outside weather conditions. The employee is occasionally exposed to fumes or airborne particles and toxic or caustic chemicals. The noise level in the work environment is usually moderate.

The job description does not create any property rights for job positions. All employees are "at will" employees as set for in Article 4.5 of the Home Rule Charter. The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

June 25, 2021

Via email

Rico Board of Trustees

2 Commercial Street

Rico, CO, 81332

Re: Engagement for Planning and Special Projects Services

To the Rico Board of Trustees,

I am pleased to offer interim planning and special project services until a new Rico town manager is hired. At that time, depending on the will of the Board of Trustees and the skills of the successful applicant, I will continue to offer services as the planner and special projects manager on a contractual basis.

As Town Planner, I will continue to offer professional and supervisory work related to the balanced and sustainable use of land and water resources in Rico. I will act as the liaison between the Rico Planning Commission and the Rico Board of Trustees. I will continue to develop processes and practices to assist and guide owners and potential developers in bringing permit requests before the Town to ensure open dialog and clarity. I will continue to provide information regarding land, water use and housing matters to the public, the Rico Planning Commission, and the Rico Board of Trustees. I will attend all Rico Planning Commission meetings and I will attend Rico Board of Trustee's meeting when appropriate.

Processing Applications, Permits and Variance applications:

Processing planning applications including the following:

1. Answering questions from potential applicants and other parties interested in properties in Rico.
2. Scheduling pre-application conferences.
3. Scheduling site visits.
4. Accepting and reviewing applications for completeness and compliance.
5. Issuing complete and compliance letters and scheduling hearings before the Rico Planning Commission and the Board of Trustees.
6. Completing staff review of the details of the application and preparing comments specific to the articles of the Rico Land Use Code and the Rico Regional Master Plan.
7. Using GIS to identify potential hazard areas.
8. Keeping Rico's GIS system updated.
9. Arranging engineering and surveying review if appropriate.

Processing Special Use Permits

1. Answering questions from potential permit applicants.
2. Scheduling pre-application conferences.
3. Accepting and reviewing permit applications for completeness and compliance.
4. Issuing complete and compliance letters and scheduling hearings before the Rico Planning Commission and the Board of Trustees.

5. Completing staff review of the details of the application and preparing comments specific to the articles of the Rico Land Use Code and the Rico Regional Master Plan.

Processing building permits:

1. Reviewing building permit applications for compliance with the Rico Land Use Code.
2. Ensuring that the building inspector receives the plans in a timely manner.
3. Tracking progress of construction and documenting certificates of occupancy.

Processing Variance Applications

1. Answering questions from potential variance applicants.
2. Scheduling pre-application conferences.
3. Accepting and reviewing variance applications for completeness and compliance.
4. Issuing complete and compliance letters and scheduling hearings before the Rico Planning Commission and the Board of Trustees.
5. Completing staff review of the details of the application and preparing comments specific to the articles of the Rico Land Use Code and the Rico Regional Master Plan.

Rico Land Use Code Revisions:

Rico Land Use Code Revisions: Completing the revisions of the Rico Land Use Code including the following:

1. Integrating comments from the Rico Board of Trustees and the Rico Planning Commission into the revised Rico Land Use Code.
2. Scheduling community meetings and facilitating public review of the revisions to the Land Use Code. This would include any proposed zoning changes as well as educating Rico residents about the VCUP plan when broad-based public input becomes appropriate.

Master planning of Town owned properties.

1. Scheduling and facilitating community meetings to begin a master planning process to determine the most desirable use of Town owned properties.
2. Documenting and mapping citizen input from public meetings.
3. Presenting the results of the community meeting input to the Rico Planning Commission and the Rico Board of Trustees.
4. Writing a grant application for funding for a consulting firm to refine and finalize the master plan.
5. Coordinating with and supplying relevant information to the chosen consulting firm.

Water Resources.

1. Working with the new town manager to track Rico's water use.
2. Providing the necessary water use records and other information to facilitate the proposed change of the point of diversion to ensure that Rico has adequate water resources for the foreseeable future.

Housing.

1. Working with the Bedrock Subdivision and future subdivisions to craft housing regulations to ensure that Rico continues to be an opportunity for workforce housing.

Special Projects Manager

As special projects manager, I will research and apply for grant funding for projects that will further the goals of the Rico Board of Trustees, with particular emphasis on infrastructure projects including the installation of a central sewer system, enhancing water resources, and rebuilding the Town Shop.

I will finish the projects that began during my time as manager including the following:

Water meter replacement and relocation project

1. With Pat Drew and Dennis Swank's assistance, continue to oversee the water meter replacement project.
2. Follow up with the grant paperwork that is associated with collecting the grant funding from the Department of Local Affairs.
3. Closing out the grant when the work is complete.

Rio Grande Southern Trail Project

1. Coordinate with the Rico Trail's Alliance on the continuation of the Rio Grande Southern Trail project and offer whatever assistance is needed and appropriate.

Recycling Project

1. Obtain equipment necessary to start the program.
2. Coordinate volunteers.
3. Follow up with the grant paperwork that is associated with collecting the grant funding from the Colorado Department of Health.
4. Closing out the grant when the work is complete.

Election November 2021

1. Coordinate with Carol Viner to draft the ballot measure.
2. Coordinate with Linda Yellowman to ensure election deadlines are met.

As long as I am on the payroll or have a contract with the Rico Board of Trustees, my computer applications including GIS, Autocad, the Adobe Suite and the Microsoft Suite will be available to the Town of Rico.

I would charge on an hourly basis and my fee would be \$45 dollars per hour for the remainder of this year and would increase to \$47.50 next year.

Kari Distefano, member AICP



CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT made and entered into effective the __th day of July, 2021, by and between:

- A. The Town of Rico, Colorado (Town) and
Ramco Developments, L.L.C., (Contractor).

Article 1 The Project

The Project consists of: Water meter replacements and relocations. See Exhibit A and Addendum supplied by Pat Drew.

Article 2 Scope of Work

- 2.1 The term “Work,” as used in this Contract includes all labor necessary to produce the construction required by this Contract, and all materials and equipment incorporated or to be incorporated in such construction.
- 2.2 The Contractor shall provide all of the Work required by this Contract for the Project.
- 2.3 By executing this Contract, the Contractor represents that he has visited the site and become familiar with the local conditions under which the Work must be performed.

Article 3 Time of Commencement and Completion

- 3.1 The Work shall be commenced with ten (10) days upon written Notice to Proceed from the Town.
- 3.2 The Work will be completed by December 31st, 2021.

Article 4 Contract Price and Payment

- 4.1 The Town will pay the Contractor, for the satisfactory performance of the Work, subject to additions and deductions by Change Order as provided in this Contract.
- 4.2 Subject to the applicable provisions of this Article, the Contractor may submit written applications for progress payments to the Town’s Representative, who shall upon review

and approval submit to the Town certificates for payment, who shall in turn make progress payments to the Contractor as follows:

The Town shall make period progress payment to Contract within fifteen (15) days following the Town's Representative's approval of the Work completed. Progress payment shall be in an amount equal to ninety percent (90%) of the Work completed until fifty percent (50%) of the total Work on the Project, as determined by the Project manager, is completed. Such determination shall include materials and equipment not incorporated in the Work but delivered to the Project site and suitably stored. After fifty percent (50%) of the total Work is completed, the retainage shall be reduced to five (5%). A progress payment shall be made only after the Contractor has submitted an application for a progress payment on a form approved by the Town's Representative, and if requested by the Town's Representative, Contractor shall submit copies of all invoices from any subcontractors or suppliers and partial waivers executed by each subcontractor or supplier to who payment is to be made by Contractor and the Town's Representative, or within any time period set forth in the Contract Documents, as modified or extended, the Town is expressly authorized to withhold any progress payment for such Work until such Work is completed.

- 4.3 If the Contract Price exceeds Two Hundred and Twenty Thousand Dollars (\$220,000.00), after completion of the Work, the Town shall publish a Notice of Final Settlement, twice, at least ten (10) days prior to the date of final settlement. The Town shall withhold from final payments any amounts as required pursuant to C.R.S. § 38-26-107.
- 4.4 In addition to the retainage set forth in paragraph 4.2, payments may be withheld on account of (a) defective Work not remedied, (b) claims for nonpayment against Contractor or any subcontractor asserted or evidence which indicates probable assertion of such claims, (c) failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment, (d) damage to another contractor or the Town, or (e) unsatisfactory prosecution of the Work by the Contractor.
- 4.5 Final payment shall not be due until (a) forty-five days after (a) the completion of the Work, (b) publication of the Notice of Final Settlement, if the Contract Price exceeds two hundred and twenty-thousand dollars, (c) the Town's Representative has inspected and approved the Work as complying with the contract, (d) receipt of copies of all invoices from any subcontractors and suppliers and a release executed by each subcontractor and supplier to whom payment is made by Contractor, and (e) receipt of any manufacturer or supplier warranties and equipment literature, and (f) any as built plans required are delivered to the Town.
- 4.6 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and remaining unsettled.
- 4.7 Any and all payments of money by the Town pursuant to this Contract shall be subject to the annual appropriations of money.

Article 5 Additional Documents

- 5.1 Attached and incorporated into this Contract are the following exhibits:

5.1.1 Exhibit A Proposal dated June 1st, 2021.

5.2 The Contract and documents listed in Section 5.1.1 shall be signed in duplicate by the Town and the Contractor. If either the Town or the Contractor does not sign the Drawings, Specifications, or any of the other documents listed in Section 5.1.1, the Town's representative shall identify them.

Article 6 Town's Representative

6.1 For the purposes in this Contract, the Town's Representative shall be, Town Manager or assign.

6.2 The Town's Representative will provide general administration of the Contract and will be the Town's representative during construction and until issuance of the final certificate for payment.

6.3 The Town's Representative shall at all times have access to the Work wherever it is in preparation and progress.

6.4 The Town's Representative will make periodic visits to the site to become familiarize generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with this Contract. On the basis of the Town's Representative's on-site observations, the Town's Representative will keep the Town informed of the progress of the Work, and will endeavor to guard the Town against defects and deficiencies in the Work. The Town's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Town's Representative will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with this Contract.

6.5 Based on such observations and the Contractor's applications for payment, the Town's Representative will determine the amounts owing to the Contractor and will issue certificates for payment.

6.6 The Town's Representative will be, in the first instance, the interpreter of the requirements of the Contract and will make decisions on all claims and disputes.

6.7 The Town's Representative will have authority to reject all or any portion of the Work that does not conform to this Contract.

Article 7 Town Obligations

7.1 The Town shall provide Neptune water meters.

7.2 The Town shall issue all instructions to the Contractor through the Town's Representative.

Article 8 Contractor Obligations

- 8.1 The Contractor shall supervise and direct the Work, using his best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract.
- 8.2 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work.
- 8.3 The Contractor shall at all times enforce strict discipline and good order among its employees, its subcontractors, and shall not employ on the Work any unfit person or anyone not skilled in the task assigned.
- 8.4 The Contractor warrants to the Town and the Town's Representative that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with this Contract. All of the Work not so conforming to these standards may be considered defective.
- 8.5 The Contractor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, and licenses necessary for the execution of the Work at Contractor's expense except as provided in Section 7.1. The Town is exempt from state and local sales and use taxes. Contractor shall take steps to obtain such exemption from the Colorado Department of Revenue pursuant to C.R.S. § 39-26-708(3).
- 8.6 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work, and shall notify the Town's Representative if the drawings and specifications are at variance therewith.
- 8.7 The Contractor shall be responsible for the acts and omissions of all its employees and all subcontractors, their agents and employees and all other persons performing any of the Work under a contract with the Contractor.
- 8.8 The Contractor shall review, stamp with its approval and submit all samples and shop drawings as directed for approval of the Town's Representative for conformance with the design concept and with the information given in this Contract. The Work shall be in accordance with approved samples and shop drawings, if any were required as part of the Project.
- 8.9 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations or operations of its subcontractors. At the completion of the Work the Contractor shall remove from the Project all waste materials, rubbish, tools, construction equipment, machinery and surplus materials, and shall clean all glass surfaces and shall leave the Project "broom clean" or its equivalent, except as otherwise specified.

Article 9 Subcontractors

- 9.1 A subcontractor is a person who has a contract with the Contractor to perform any of the Work on the Project.
- 9.2 Unless otherwise specified in this Contract or in the instructions to bidders, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Town's Representative in writing a list of the names of subcontractors proposed for the principal portions of the Work. The Contractor shall not employ any subcontractor to whom the Town may have a reasonable objection. The Contractor shall not be required to employ any subcontractor to whom he has a reasonable objection. Contracts between the Contractor and the subcontractor shall be in accordance with the terms of this Contract insofar as applicable.

Article 10 Separate Contracts and Town Work

- 10.1 The Town reserves the right to award other contracts in connection with other portions of the Project or other work on the site or to perform such work itself.
- 10.2 The Contractor shall afford other contractors or the Town reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate its efforts with theirs.
- 10.3 Any costs caused by defective or untimely work shall be borne by the party responsible therefore.

Article 11 Performance and Payment Bonds

- 11.1 If the Contract Price exceeds One Hundred and Fifty Thousand Dollars, a Performance and a Payment Bond shall be submitted by the Contractor.
 - 11.1.1 Each bond shall be in the amount of the Contract Price and shall either be in the form supplied by the Town or shall be in such other form as approved by the Town.
 - 11.1.2 Each bond shall comply with the requirements of C.R.S. §§ 38-26-105 and 106.
- 11.2 If the Contract Price is One Hundred and Fifty Thousand Dollars or less, at the Town's discretion, a clean irrevocable letter of credit to the Town from a bank acceptable to the Town may be substituted for Performance and Payment Bonds. Such letter of credit shall not expire prior to one year following final settlement.
- 11.3 The Town reserves the right to require Performance and Payment Bonds if a Change Order increases the Contract Price in excess of One Hundred and Fifty Thousand Dollars.

Article 12 Time

- 12.1 All time limits stated in this Contract are of the essence.
- 12.2 If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation,

unavoidable casualties, causes beyond the Contractor's control, or by any cause that the Town's Representative may determine justifies the delay, then the contract time shall be extended by change order for such reasonable time as the Town's Representative may determine.

- 12.3 In strict accordance with C.R.S. § 24-91-103.5, the Town shall not amend the Contract Price to provide for additional compensation for any delays in performance that are not the result of acts or omission within control of the Town or a person acting on behalf of the Town. The Town shall extend the time of performance; however, to correspond to the length of any delay suffered by Contractor due to activities or circumstances that are unforeseen or unforeseeable in the construction industry, and so long as such delay is not attributable to Contractor's acts or omissions, or those of any person or entity or subcontractor controlled or selected and contracted for by Contractor.

Article 13 Liquidated Damages

- 13.1 The time of completion of the construction of the Project is the essence of this Contract. Should the contractor neglect, refuse or fail to complete the construction within the time agreed upon, after giving effect to extensions of time, if any, then, in that event and in view of the difficulty of estimating with exactness the damages caused by such delay, the Town shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the contractor the sum of \$250.00 per day for each and every day that construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty.

Article 14 Protection of Persons and Property and Risk of Loss

- 14.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (a) all employees on the Work and other persons who may be affected thereby, (b) all of the Work and all materials and equipment to be incorporated therein, and (c) other property at the site or elsewhere.
- 14.2 Contractor shall bear all risk of loss to the Work, or materials or equipment for the Work due to fire, theft, vandalism, or other casualty or cause, until the Work is fully completed and accepted by the Town. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. All damage or loss to any property caused in whole or in part by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor.

Article 15 Indemnification

- 15.1 The Contractor agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or

any other loss of any kind whatsoever, which arise out of or are in any manner connected with this contract, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, Contractor error, mistake, negligence, or other fault of the Contractor, any subcontractor of the Contractor, or any officer, employee, representative, or agent of the Contractor or of any subcontractor of the Contractor, or which arise out of any worker's compensation claim of any employee of the Contractor or of any employee of any subcontractor of the Contractor. The Contractor agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Contractor, or at the option of Town, agrees to pay Town or reimburse Town for the defense costs incurred by Town in connection with, any such liability, claims, or demands. The Contractor also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. The obligation of this section shall not extend to any injury, loss, or damage caused solely by the act, omission, or other fault of the Town, its officers, or its employees.

Article 16 Insurance

The Contractor agrees to procure and maintain, at its own cost, during the entire period of this Contract, a policy or policies of liability insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to this Contract including property, bodily injury and death, as well as claims worker's compensation and other employee benefit law. Such insurance shall be a combined single limit of not less than one million dollars (\$1,000,000) per occurrence for bodily injury or death, and two hundred fifty thousand dollars (\$500,000) for property damage. Such insurance shall name the Town as additional, incurred, and shall provide for a minimum thirty (30) days' written notice of cancellation. Proof of such insurance shall be filed by the Contractor with the Town prior to the execution of the Construction Contract by the Town.

- 16.1 Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate this contract, or at its discretion the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to Town upon demand, or Town may offset the cost of the premiums against any monies due to Contractor from the Town.
- 16.2 The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- 16.3 This Contract shall not be executed, and no Notice to Proceed shall be given until the certificates required above, are submitted and approved by the Town.

Article 17 Governmental Immunity

17.1 The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 et seq.), or otherwise available to the Town, its officers, or its employees.

Article 18 Changes in the Work

- 18.1 The Town without invalidating this contract may order changes in the Work consisting of additions, deletions, or modifications with the contract sum and the contract time being adjusted accordingly. All such changes in the Work shall be authorized by written change order signed by the Town.
- 18.2 The contract sum and the contract time may be changed only by Change Order.
- 18.3 The cost or credit to the Town, if any, from a change in the Work shall be determined by unit prices if specified in this Contract, or by mutual agreement.

Article 19 Correction of the Work

- 19.1 The Contractor shall correct any of the Work that fails to conform to the requirements of this Contract where such failure to conform appears during the progress of the Work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one (1) year from the date of final settlement of the contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by this Contract.
- 19.2 The provisions of this Article apply to the Work done by subcontractors as well as to the Work done by the Contractor, and are in addition to any other remedies or warranties provided by law.

Article 20 Termination by the Contractor

- 20.1 If the Town's Representative fails to issue a certificate of payment for a period of thirty (30) days through no fault of the Contractor, or if the Town fails to make payment thereon for a period of thirty (30) days, the Contractor may, upon seven (7) days' written notice to the Town and the Town's Representative, terminate the Contract and recover from the Town payment for all Work executed and for any proven loss sustained upon any materials, equipment tools, and construction equipment and machinery, including reasonable profit and damages.

Article 21 Illegal Aliens

- 21.1 Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- 21.2 Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.
- 21.3 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either (a) the E-Verify Program, (the electronic employment verification program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration, or its successor program) or (b) the

Department Program (the employment verification program established pursuant to C.R.S. § 8-17.5-102(5)(c)).

- 21.4 The Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Contract is being performed.
- 21.5 If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (a) notify the Subcontractor and the Town within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 21.6 The Contractor shall comply with any reasonable request by the Department of Labor and Employment in the course of an investigation that the Department undertakes pursuant to C.R.S. § 8-17.5-102(5).
- 21.7 If the Contractor violates these illegal alien provisions, the Town may terminate this Contract for a breach of contract. If this Contract is so terminated, the Contractor shall be liable for actual and consequential damages to the Town. The Town will notify the Office of the Secretary of State if the Contractor violates these provisions and the Town terminates this Contract for that reason.
- 21.8 The Contractor shall notify the Town of participation in the Department Program and shall within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Contract affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 USC § 1324a, and not altered or falsified the identification documents for such employee. Contractor shall provide a written, notarized copy of the affirmation to the Town.

Article 22 Termination by the Town

- 22.1 This Contract is contingent upon the Town's issuance of a Notice to Proceed to the Contractor, which shall only be issued upon the Town's approval of a submitted design by the Contractor, pursuant to separate contractual arrangement with the Town. Should the Town not approve of the design as submitted, the Town is not obligated to issue a Notice to Proceed with this contract and reserves the right to terminate this contract accordingly, with no payment or penalty obligation whatsoever.
- 22.2 If the Contractor defaults or neglects to carry out the Work in accordance with this Contract or fails to perform any provision of the contract, the Town may, after seven (7) days' written notice to the Contractor and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option, may terminate the

Contractor's work under the contract and take equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient, and if the unpaid balance of the contract sum exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Town. These rights and remedies are in addition to any right to damages or other rights and remedies allowed by law.

- 22.3 Notwithstanding any other provisions in this Contract, the Town may terminate this contract, with or without cause, with seven (7) days written notice to the Contractor. Upon receiving such written notice from the Town terminating the Contract, Contractor shall cease providing services related to the Work immediately. The Town shall only be liable for payment to Contractor for Contractor's services related to the Work that were performed prior to receipt of the notice. In addition, the Town shall only be liable for materials acquired by Contractor prior to receipt of the notice. Materials paid for by the Town under this provision shall be the property of the Town and shall be immediately deliverable by Contractor upon such payment by the Town. The Town shall not be liable for any services performed or materials acquired after receipt of the notice.

Article 23 Miscellaneous Provisions

- 23.1 Each party agrees to take such actions and sign such documents, certificates and instruments reasonably requested by the other party in order to complete the transactions contemplated by this Contract and to enable the requesting party to enjoy the full benefits conferred upon such party by this Contract.
- 23.2 This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this Contract.
- 23.3 This Contract is expressly subject to the provision of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the Town nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Town of Rico Board of Trustees for payment of the Contract. The Town acknowledges and agrees that sufficient funds have been appropriated to pay the Contract Price, but Contractor shall not rely upon the appropriation of any monies or other funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Town of Rico Board of Trustees.
- 23.4 This Contract shall inure to the benefit of and be binding on the parties, their successors and assigns.
- 23.5 If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.

- 23.6 This Contract shall be governed by the laws of the State of Colorado, both as to interpretation and performance. The courts of the State of Colorado shall have exclusive jurisdiction to resolve any disputes arising out of this Contract and venue shall be in Dolores County, Colorado.
- 23.7 No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.
- 23.8 The rights and remedies available under this contract shall be in addition to any rights and remedies allowed by law.
- 23.9 The terms of this Contract shall remain in full force and effect following final payment.
- 23.10 This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- 23.11 For the convenience of the parties, signatures to this Contract may be provided through facsimile transmission. The signature of a party to this Contract supplied by facsimile transmission shall be as binding as an original.
- 23.12 Wherever in this Contract, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and wherever in this Contract, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply. This contract is governed by the laws of the State of Colorado.

TOWN:

CONTRACTOR:

Barbara Betts, Town of Rico Mayor

Burt Ramsey, Proprietor

Attest: _____
Linda Yellowman, Town of Rico Clerk