Town Board of Trustees

Tuesday, February 23, 2021 at 7:00 pm

PLEASE SILENCE ALL CELL PHONE AND ELECTRONIC DEVICES. THANK YOU.

1. **Meeting Information**
   To watch a live stream of the meeting
   The information for the Town's virtual meeting can be found below:
   https://us02web.zoom.us/j/89441142121

   Meeting ID: 894 4114 2121

   Passcode: 926212

   One tap mobile
   +16699006833

2. **Call to Order**
   Royce D. Pindell, Mayor
   a. **Roll Call**
3. **Pledge of Allegiance**
   Royce D. Pindell, Mayor

   Attachments:

   - **American Flag** (American_Flag.pdf)

4. **Approval of Agenda**
   Royce D. Pindell, Mayor
5. **Consent Agenda**
   Royce D. Pindell, Mayor
   a. **February 9, 2021 - Regular Meeting Minutes**

      Attachments:

      - **February 9, 2021 - Regular Meeting Minutes** (02-09-2021_-_Regular_Meeting_Minutes.pdf)

Public Comments on Items Not Scheduled for Public Hearing

The Board of Trustees welcomes you. Thank you for joining us virtually for our Town of

Bennett Board of Trustees Meeting. If you are not speaking, we ask that you please mute your microphone. For public comment please sign up in the chat box. If you are on the phone, once we get through the chat box we will call for any other comments for items not on the agenda.

Your comments will be limited to three (3) minutes. The Board may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and provide direction to the appropriate member of Town Staff for follow-up. Thank you.

Regular Business

6. **Action/Discussion Items**
   a. **Public Works Facility Lease Purchase**
   Resolution No. 864-21 - A Resolution Approving an Underwriting Engagement Agreement
   Danette Ruvalcaba, Director of Finance

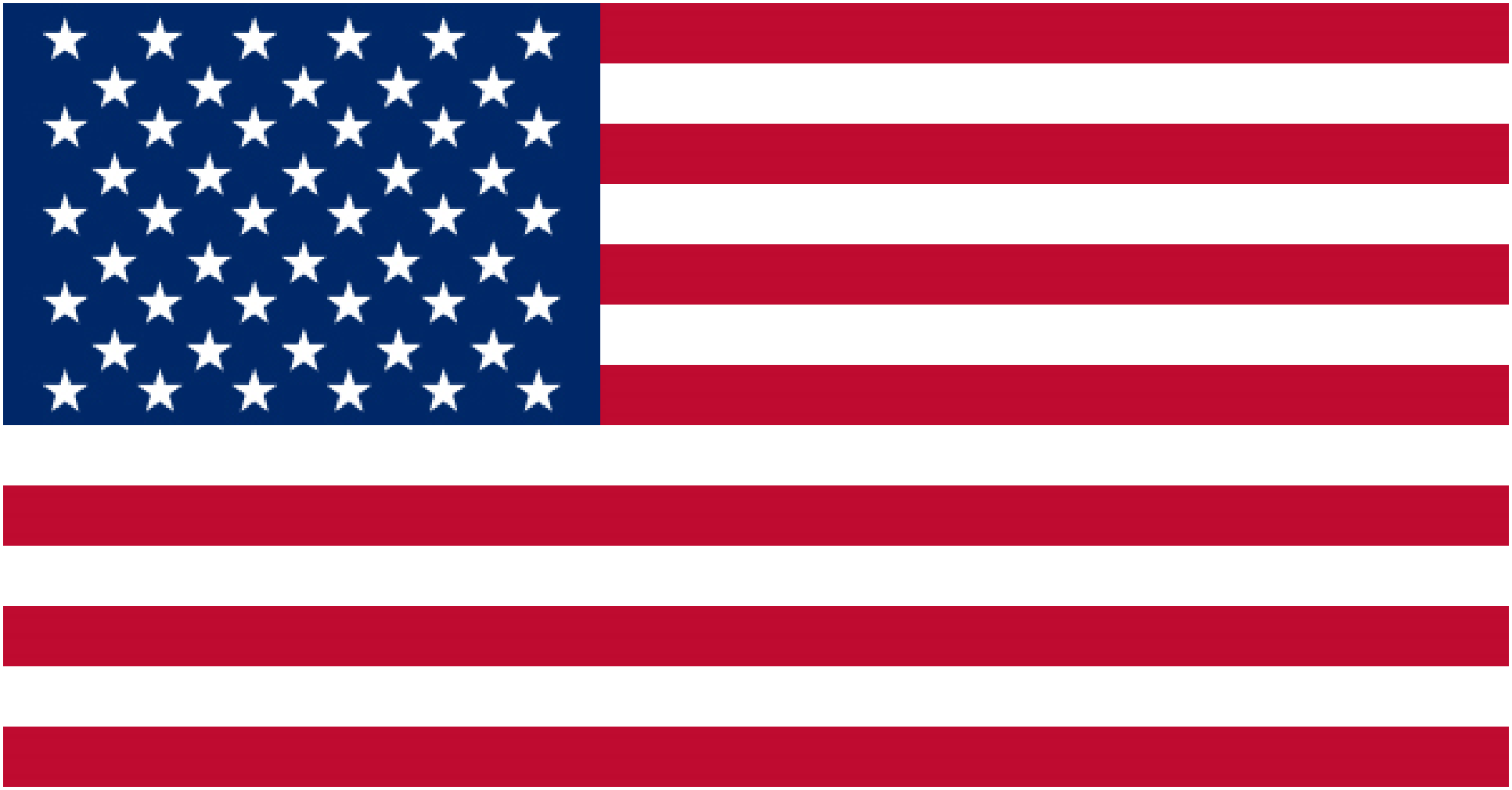
   Attachments:

   - **Staff Report 2021 Certificate of Participation Issuance** (Lease_Purchase_Staff_Report.pdf)
   - **Amortization Schedule** (Sample_Amortization_Schedule_NoMCom.pdf)
   - **Resolution No. 864-21 - A Resolution Approving an Underwriting Engagement Agreement** (RESOLUTION-COP.pdf)
   - **Suggested Motion** (suggested_motion.pdf)

7. **Town Staff Reports**
   Trish Stiles, Town Administrator

8. **Trustee Comments and Committee Reports**
   Mayor and Trustees
9. **Adjournment**

Individuals with disabilities who need auxiliary aids in attending the meeting may request assistance by contacting the Town Hall at 207 Muegge Way, Bennett, CO 80102-7806, (303) 644-3249. Please give notice at least 48 hours in advance of the meeting to allow for enough time in making the necessary arrangements.



TOWN OF BENNETT, COLORADO
BOARD OF TRUSTEES
Regular Meeting
February 9, 2021

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1. CALL TO ORDER

The Board of Trustees of the Town of Bennett met in regular session on Tuesday, February 9, 2021 virtually via Zoom Link. Mayor Royce Pindell called the meeting to order at 7:00 p.m. The following persons were present upon the call of the roll:

Mayor: Royce Pindell

Trustees Present: Darvin Harrell
Whitney Oakley
Rich Pulliam
Denice Smith
Donna Sus
Larry Vittum

Staff Present: Trish Stiles, *Town Administrator*
Rachel Summers, *Deputy Town Administrator*
Taeler Houlberg, *Assistant to the Town Administrator*
Alison Belcher, *Public Relations Coordinator*
Sara Aragon, *Community Development Coordinator*
Steve Hebert, *Planning and Economic Development Manager*
Lynette White, *Economic Development Coordinator*
Dan Giroux, *Town Engineer*
Melinda Culley, *Town Attorney*
Christina Hart, *Town Clerk*

Public Present: Charles Bayley, Martin Metsker, Kathy Smiley, Nichole Harrell, Aaron Farmer

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Royce Pindell.

3. APPROVAL OF AGENDA

TRUSTEE PULLIAM MOVED, TRUSTEE VITTUM SECONDED to approve the agenda as presented. The voting was as follows:

YES: Oakley, Pindell, Pulliam, Smith, Sus, Vittum, Harrell
NO: None

Mayor Royce Pindell declared the motion carried by unanimous vote.

4. CONSENT AGENDA

TRUSTEE PULLIAM MOVED, TRUSTEE VITTUM SECONDED to approve the consent agenda as presented.

YES: Pindell, Pulliam, Smith, Sus, Vittum, Oakley, Harrell
NO: None

Mayor Royce Pindell declared the motion carried by unanimous vote.

A. **Action:** Approval of January 26, 2021 Regular Meeting Minutes.
B. **Action:** Special Warranty Deed – Muegge Farms
C. **Action:** Third Amendment to the Memorandum of Understanding (MOU) Muegge Farms

Mayor Royce Pindell declared the motion carried by unanimous vote.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

There were no public comments.

5. REGULAR BUSINESS

A. Action/Discussion

1. **Selection of Town Water Council**

Trish Stiles, Town Administrator, reported to the Board of Trustees, The Town of Bennett currently utilizes professional legal service specializing in water from two outside firms. We utilize two separate firms, one handling groundwater and the other surface water.

Ground Water

Rick Fendel, Petrock and Fendel

Mr. Fendel recently retired and Matt Poznanovic has been taking over for Mr. Fendel since his retirement. There have been many changes since and the firm is heading in a different direction. The last item with them will be to finish the purchase of the Piland groundwater.

Surface Water

Cynthia Covell, Alperstein & Covell P.C.

Ms. Covell has been working with the Town on our renewable surface water project. She will continue with the finalization of contracts for the project, however, due to a conflict in the firm for the water rights filing, Ms. Covell will need to be replaced.

As we move forward our most immediate actions today are related to our ground water needs. Chiefly, the Town, along with Gina Burke and a new attorney, need to update/amend the variance the Town has with the Ground Water Commission. The variance allows the Town the ability to operate its wells as a well field, where all wells in the same aquifer have access to pump the same water. The variance will allow for redundancy in that if one well were to go down, the other wells in the same aquifer are allowed to increase pumping to make up for the downed well. In addition, with our recent water purchases, we will need to add the additional ground water to the Town's well field through the variance.

Staff interviewed four firms to provide professional legal services to the Town for each specific need. The staff reviewed the choices with the Water Committee on 2/3/2021. The following are the recommended choices from that meeting.

Ground Water

Mason Hamill Brown - Carlson, Hammond & Paddock, L.L.C. - $265 hourly
Lee H. Johnson - Carlson, Hammond & Paddock, L.L.C. - $295 hourly
Katrina B. Fiscella - Carlson, Hammond & Paddock, L.L.C. - $250 hourly

Surface Water, Filing for Water Rights Case

Scott A. Clark - Burns, Figa and Will (BFW Attorneys) - $270 hourly
With assistance from:
April D. Hendricks - Burns, Figa and Will (BFW Attorneys) - $195 hourly

Charles Bayley, BennT Creek Water Authority committee member, reported to the Board of Trustees, Cindy Covell, Alperstein & Covell P.C., provided exceptional legal services to the Town of Bennett and the value Ms. Covell has brought to the Town. An additional reason for recommending two firms is due to prevent any potential conflicts with ground water and surface water filings.

Trustee Pulliam, and BennT Creek Water Authority committee member, reported to the Board that the Town of Bennett currently has a well field designation. When the previous well field designation was obtained it did not include the future well field due to an error with the commission.

Staff and the BennT Creek Water Authority, recommends that the Town Administrator sign engagement letters with both Carlson, Hammond & Paddock, L.L.C. and Burns Figa and Will Attorneys.

TRUSTEE PULLIAM MOVED, MAYOR PRO TEM HARRELL SECONDED to authorize the Town Administrator to sign engagement letters with Carlson, Hammond & Paddock, L.L.C. and Burns, Figa, and Will Attorneys for professional legal services regarding ground water and surface water. Voting was as follows:

YES: Pulliam, Smith, Sus, Vittum, Harrell, Oakley, Pindell
NO: None

Mayor Royce Pindell declared the motion passed by unanimous vote.

2. Town of Bennett Business Support and Recruitment Strategy

Steve Hebert, Planning and Economic Development Manager, reported to the Board of Trustees, The Town of Bennett submitted an application to the Department of Local Affairs (DOLA) for a Rural Economic Development Initiative (REDI) grant in August 2020 to assist the Town in developing a business support and recruitment strategy. The overall objective is to support existing local businesses and attract new businesses to the community. The budget for the project is $50,000. We were awarded the REDI Grant funds on November 3, 2020 in the amount of $25,000, and there will be a $25,000 match from the Town.

The Town issued Request for Proposal RFP 20-012 for written proposals for a Business Support and Recruitment Strategy on November 11, 2020 with a submittal deadline of December 11, 2020.

The firms who expressed interest and their proposed pricing are as follows:

a. Better City $51,075
b. Retail Strategies $40,000
c. The Retail Coach $50,000
d. We The People Consulting $105,000

Staff evaluated the submittals on price, team approach, team member experience, similar project experience, project approach, and the proposed schedule to deliver the requested outcomes.

Interviews were scheduled and conducted with Better City, Retail Strategies, and the Retail Coach.

The interview included questions on their knowledge of the Town of Bennett and the surrounding area, work in similar communities and successes, data sources, marketing, conference representation and more importantly, their approach to local business retention and preparation for future growth. Each company provided a presentation during this process.

Town Staff recommends The Retail Coach for the Business Support and Recruitment Strategy. We are confident this team will assist our existing local businesses in preparing for future growth and assist the Town of Bennett in accomplishing our goals for economic development in our community. The Retail Coach has visited the Town of Bennett.

The Retail Coach bid of $50,000 is within the proposed budget for this project by combining the awarded $25,000 DOLA grant and the Town's $25,000 match as approved 2021 Town of Bennett Budget.

Lynette White, Economic Development Coordinator, reported to the Board one of the items that highlighted The Retail Coach during the process, was their approach to helping small communities grow while recognizing the existing businesses and the importance of the understanding for those businesses to prosper as well.

Rachel Summers, Deputy Town Administrator, reported one of highlights during The Retail Coach interview that stood out was their preparedness for the meeting. The data they presented was very robust with systems already put into place to attract new businesses to the Town of Bennett.

Aaron Farmer, The Retail Coach, thanked the Board of Trustees and expressed their excitement to work with the Town of Bennett. The Retail Coach will have a presence in the Town of Bennett gaining additional information about the businesses in Bennett.

TRUSTEE OAKLEY MOVED, TRUSTEE PULLIAM SECONDED, to authorize the Mayor and the Town of Bennett to sign a standard Agreement for Consulting Services with The Retail Coach, L.L.C. for the preparation of a Bennett Business Support and Recruitment Strategy, for a total contract amount not to exceed $50,000. Voting was as follows:

YES: Smith, Sus, Vittum, Harrell, Oakley, Pindell, Pulliam
NO: None

Mayor Royce Pindell declared the motion passed by unanimous vote.

6. TOWN STAFF REPORTS

Town Administrator

Trish Stiles, Town Administrator provided the following report;

- Congratulations Rachel Summers, Deputy Town Administrator, for securing a Department of Local Affairs (DOLA) grant for $500,000 for the water tank project. Thank you DOLA!
- Bids have been received for the CMR Well 6 project.
- The new lift station has been fully transferred. The well is up and running. Thanks to the Town of Bennett Team.
- Staff met with the Bennett School District 29j. Bennett School District has hired a consultant for the master planning for the school site.
- The City of Aurora has filed an objection to the Town of Bennett to the determination of water rights filing for ground water.
- Jerry Weller, Utility Billing Specialist, will begin part time employment, per his request as he looks towards his future. Staff has started interviews for the transition.
- Staff is working towards a vaccination clinic to be held in Bennett.
- King Soopers does not have current access to COVID-19 vaccines at this time.
- The Board retreat is scheduled for February 12, 2021. The focus will be on the Comprehensive Plan.
- Staff that was infected by the COVID-19 virus is working towards becoming healthy.

7. TRUSTEE COMMENTS AND COMMITTEE REPORTS

Larry Vittum

Trustee Vittum reported on the following;

- Denver Regional Council of Governments (DRCOG) provides a "Citizens Academy" training annually.
- Todd Cotrell, with DRCOG, talked about the upcoming TIPS cycle. The TIPS program will open up for projects in April 2022.
- Gallagher Law: The formula/structure for property real estate property tax is going to change. Real estate tax paid by commercial property may decrease while residential property tax would increase. This is a state wide issue. The current structure expired December 31, 2020. The former structure was 29% of market value. There is an urgency for money, at the State level, due to the decrease in sales taxes as a result of the COVID-19 pandemic.

Darvin Harrell

Mayor Pro Tem Harrell reported on the following;

- The recent high winds were forcing water all over dirt new development, therefore wasting water. Do they have water controls on their dirt?
- Family Dollar was broken into during the holiday season.
- What is the amount of time residents have to shovel snow from their sidewalks? Ms. Stiles confirmed the residents have 24 hours to remove snow from the sidewalks.

Royce Pindell

Mayor Pindell reported on the following;

- Sent well wishes to the employees effected by COVID-19.
- Adams County has not had meetings scheduled in the past two weeks.

8. EXECUTIVE SESSION

(1) for discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; and (2) for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); Town Administrator Performance Review and Contract

TRUSTEE PULLIAM MOVED, TRUSTEE OAKLEY SECONDED to go into executive session for:
(1) for discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; and (2) for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); Town Administrator Performance Review and Contract

YES: Sus, Vittum, Harrell, Oakley, Pindell, Pulliam, Smith
NO: None

The Mayor declared the motion carried by unanimous vote.

The Board went into executive session at 8:10 p.m.

The Board came out of executive session at 9:55 p.m. The Mayor announced that the Board had been in executive session and the following persons participated virtually in that session: Mayor Royce Pindell, Trish Stiles, Trustee Oakley, Trustee Pulliam, Trustee Vittum, Melinda Culley, Trustee Sus, Trustee Smith, Mayor Pro Tem Harrell, and Trustee Vittum. The Mayor asked if there were any matters not included in the motion for an executive session or violations of the Open Meetings Law, and if so, that these concerns be stated for the record. No concerns were presented.

The Board of Trustees resumed the open meeting at 9:56 p.m.

10. Action/ Discussion

a. To Take Action on the Town Administrator Performance Review and Contract

TRUSTEE PULLIAM MOVED, MAYOR PRO TEM HARRELL SECONDED, to direct the Committee to prepare a final evaluation for public release to just include the numerical ratings for the Town Administrator. Voting was as follows:

YES: Vittum, Harrell, Oakley, Pindell, Pulliam, Smith, Sus
NO: None

Mayor Royce Pindell declared the motion passed by unanimous vote.

TRUSTEE PULLIAM MOVED, MAYOR PRO TEM HARRELL SECONDED to approve the seventh amended contract with the terms discussed in the executive session which was a 5% increase in salary, a $25,000 bonus, and an increase of vacation days of one week with the remaining terms to stay the same. Voting was as follows:

YES: Sus, Vittum, Harrell, Oakley, Pindell, Pulliam, Smith
NO: None

Mayor Royce Pindell declared the motion passed by unanimous vote.

11. ADJOURNMENT

TRUSTEE VITTUM MOVED, TRUSTEE PULLIAM SECONDED to adjourn the meeting. The meeting was adjourned at 10:03 p.m. Voting was as follows:

YES: Harrell, Oakley, Pindell, Pulliam, Smith, Sus, Vittum
NO: None

The Mayor declared the motion carried by unanimous vote.

_____

Royce D. Pindell, Mayor

_____

Christina Hart, Town Clerk

STAFF REPORT

TO: Mayor and Town of Bennett Board of Trustees

FROM: Danette Ruvalcaba, Director of Finance

DATE: February 23, 2021

SUBJECT: 2021 Certificate of Participation Issuance

Background

On January 26, 2021, the Board provided direction to the Director of Finance to pursue Certificate of Participation (COP) issuance with Stifel, Nicolaus & Company to finance the construction of the Public Works North Municipal Complex (NoMCom). Through this investigative period, Town staff has identified two viable financing options.

Financing Options

Option 1

Issue COP debt for $2.4 million with a 25-year term and an anticipated interest rate of 2% for the construction of NoMCom. Today, the Town General Fund debt includes the 2017 Lease Purchase with Key Government Finance with a current balance of $1.2 million and an annual payment of $100,868. Option 1 would result in a combined estimated General Fund annual debt commitment in the amount of $223,797.

Option 2

Issue a 25-year COP issuance of $3.6 million with a 25-year term and an anticipated interest rate of 2%. The total issuance would refinance the 2017 Lease Purchase and include the $2.4 million for the construction of NoMCom. The underwriters will include provisions that Town Hall would be released from obligation by 2031 or when the principal is reduced to the $2.4 million, whichever comes first, to remain consistent with the 2017 Lease Purchase. Furthermore, the underwriters will include early pay-off options in the issuance. This option would result in an estimated annual debt payment of $184,394.

	Current	Option 1	Option 2
2017 Lease	$100,868	$100,868	$0
2021 Certificate of Participation	0	122,929	184,394
Total Debt	$100,868	$223,797	$184,394

Staff Recommendation

Staff recommends the approval of Resolution 864-21 approving an underwriting engagement agreement with Stifel, Nicolaus & Company. Additionally, staff recommends that the Board direct Stifel, Nicolaus & Company pursue debt issuance **Option 2,** seeking a 25-year COP issuance for $3.6 million, including the new construction of the NoMCom and the refund of the 2017 Lease Purchase.

Attachments

1. Amortization Schedules
2. Resolution 864-21

	Current	Option 1	Option 2
2017 Lease	$100,868	$100,868	$0
2021 Certificate of Participation	0	122,929	184,394
Total Debt	$100,868	$223,797	$184,394

Amortization for Lease Purchase

Annual Interest Rate		3.08%
Years		15
Payments per year		1
Amount	$	1,454,400

Payment Number	Payment	Principal	Interest	Balance
1	($100,840)	($76,700)	($24,140)	$1,377,700
2	($100,834)	($58,400)	($42,434)	$1,319,300
3	($100,834)	($60,200)	($40,634)	$1,259,100
4	($100,880)	($62,100)	($38,780)	$1,197,000
5	($100,868)	($64,000)	($36,868)	$1,133,000
6	($100,796)	($65,900)	($34,896)	$1,067,100
7	($100,866)	($68,000)	($32,866)	$999,100
8	($100,872)	($70,100)	($30,772)	$929,000
9	($100,814)	($72,200)	($28,614)	$856,800
10	($100,890)	($74,500)	($26,390)	$782,300
11	($100,794)	($76,700)	($24,094)	$705,600
12	($100,832)	($79,100)	($21,732)	$626,500
13	($100,896)	($81,600)	($19,296)	$544,900
14	($100,882)	($84,100)	($16,782)	$460,800
15	($474,992)	($460,800)	($14,192)	$0

Sample Amortization for Certificate of Participation New Construction Only

Annual Interest Rate		2.00%
Years		25
Payments per year		1
Amount	$	2,400,000

Full Project Budget	$	3,120,000
Issuance Cost	$	80,000
Town Hall Pay Off	$	-
DOLA	$	489,000
PUB FAC	$	311,000
Loan Required	$	2,400,000

Payment Number	Payment	Principal	Interest	Balance
1	($122,929)	($74,929)	($48,000)	$2,325,071
2	($122,929)	($76,428)	($46,501)	$2,248,643
3	($122,929)	($77,956)	($44,973)	$2,170,687
4	($122,929)	($79,515)	($43,414)	$2,091,172
5	($122,929)	($81,106)	($41,823)	$2,010,066
6	($122,929)	($82,728)	($40,201)	$1,927,338
7	($122,929)	($84,382)	($38,547)	$1,842,956
8	($122,929)	($86,070)	($36,859)	$1,756,886
9	($122,929)	($87,791)	($35,138)	$1,669,095
10	($122,929)	($89,547)	($33,382)	$1,579,548
11	($122,929)	($91,338)	($31,591)	$1,488,210
12	($122,929)	($93,165)	($29,764)	$1,395,045
13	($122,929)	($95,028)	($27,901)	$1,300,017
14	($122,929)	($96,929)	($26,000)	$1,203,088
15	($122,929)	($98,867)	($24,062)	$1,104,221
16	($122,929)	($100,845)	($22,084)	$1,003,376
17	($122,929)	($102,862)	($20,068)	$900,514
18	($122,929)	($104,919)	($18,010)	$795,596
19	($122,929)	($107,017)	($15,912)	$688,579
20	($122,929)	($109,157)	($13,772)	$579,421
21	($122,929)	($111,341)	($11,588)	$468,080
22	($122,929)	($113,567)	($9,362)	$354,513
23	($122,929)	($115,839)	($7,090)	$238,674
24	($122,929)	($118,156)	($4,773)	$120,519
25	($122,929)	($120,519)	($2,410)	($0)

Sample Amortization for Certificate of Participation with Lease Purchase Refund

Annual Interest Rate		2.00%
Years		25
Payments per year		1
Amount	$	3,600,000

Full Project Budget	$	3,120,000
Issuance Cost	$	80,000
Town Hall Pay Off	$	1,200,000
DOLA	$	489,000
PUB FAC	$	311,000
Loan Required	$	3,600,000

Payment Number	Payment	Principal	Interest	Balance
1	($184,394)	($112,394)	($72,000)	$3,487,606
2	($184,394)	($114,641)	($69,752)	$3,372,965
3	($184,394)	($116,934)	($67,459)	$3,256,031
4	($184,394)	($119,273)	($65,121)	$3,136,758
5	($184,394)	($121,658)	($62,735)	$3,015,099
6	($184,394)	($124,092)	($60,302)	$2,891,008
7	($184,394)	($126,573)	($57,820)	$2,764,434
8	($184,394)	($129,105)	($55,289)	$2,635,329
9	($184,394)	($131,687)	($52,707)	$2,503,642
10	($184,394)	($134,321)	($50,073)	$2,369,322
11	($184,394)	($137,007)	($47,386)	$2,232,315
12	($184,394)	($139,747)	($44,646)	$2,092,567
13	($184,394)	($142,542)	($41,851)	$1,950,025
14	($184,394)	($145,393)	($39,001)	$1,804,632
15	($184,394)	($148,301)	($36,093)	$1,656,331
16	($184,394)	($151,267)	($33,127)	$1,505,064
17	($184,394)	($154,292)	($30,101)	$1,350,772
18	($184,394)	($157,378)	($27,015)	$1,193,394
19	($184,394)	($160,526)	($23,868)	$1,032,868
20	($184,394)	($163,736)	($20,657)	$869,132
21	($184,394)	($167,011)	($17,383)	$702,121
22	($184,394)	($170,351)	($14,042)	$531,770
23	($184,394)	($173,758)	($10,635)	$358,011
24	($184,394)	($177,233)	($7,160)	$180,778
25	($184,394)	($180,778)	($3,616)	($0)

RESOLUTION NO. 864-21

A RESOLUTION APPROVING AN UNDERWRITING ENGAGEMENT AGREEMENT

WHEREAS, the Town desires to contract for underwriting services related to its issuance of certificates of participation: and

WHEREAS, the Board of Trustees has determined that the proposed contract is in the best interest of the Town and its citizens and desires to enter into such a contract and related documents.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF BENNETT, COLORADO, AS FOLLOWS:

Section 1. The Underwriter Engagement Agreement between the Town of Bennett and Stifel, Nicolaus & Company (the "Agreement") is hereby approved in essentially the same forms as the copy of such agreement accompanying this resolution.

Section 2. The Mayor is hereby authorized to execute the Agreement, except that the Mayor is hereby further granted the authority to negotiate and approve such revisions to said Agreement as the Mayor determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the agreement are not altered.

INTRODUCED, ADOPTED AND RESOLVED THIS 23RD DAY OF FEBRUARY 2021.

TOWN OF BENNETT

_____

Royce D. Pindell, Mayor

ATTEST:

_____

Christina Hart, Town Clerk

UNDERWRITER ENGAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20__, by and among the Town of Bennett, Colorado (the "Issuer") and Stifel, Nicolaus & Company, Incorporated, (the "Underwriter" or "Stifel"), with reference to the following facts:

RECITALS

WHEREAS, the Issuer plans to issue Certificates of Participation (the "COPs") to finance the refunding of an existing Lease Purchase Agreement and to finance improvements to the Issuer's Public Works facility (the "Project"); and

WHEREAS, the Issuer desires and is authorized by law to retain the services of the Underwriter in connection with the issuance of the COPs; and

WHEREAS, the Underwriter agrees to be retained by the Issuer and to provide to the Issuer the services described herein; and

WHEREAS, Stifel agrees to act as underwriter, subject to the conditions set forth herein;

NOW therefore, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

Scope of Services

The Issuer has engaged the Underwriter to perform various services related to the issuance of the COPs, which are to be performed within the framework of all relevant rules and regulations. All services are provided on an arm's length, commercial basis and may or may not be provided in conjunction with services provided by advisors to the Issuer, such as, but not limited to, a financial advisor or a municipal advisor.

With this understanding, the Underwriter may provide the following services and perform the following functions with respect to the COPs:

A. <u>Structuring the Financing</u>

1. The Underwriter will work with the Issuer, its bond counsel, financial advisor, disclosure counsel, and other members of the Issuer's financing team in evaluating specific terms and conditions affecting the COPs with the purposes of meeting the Issuer's financing objectives and assuring appropriate credit quality;

2. The Underwriter will work with the Issuer to create a feasible and efficient structure for the COPs in order to enhance the COPs' marketability;

3. In cooperation with Issuer, the Underwriter will assist in the preparation of and/or review of all documents necessary to implement the issuance of the COPs, including, but not limited to, authorizing resolutions, certificate purchase agreement, and preliminary and final official statements distributed to potential investors, as required;

4. Attend all meetings and be available to the Issuer, its administration and other agents for consultation and conference at times and places mutually agreed upon throughout the Project;

5. Assist the Issuer in the preparation, coordination and distribution of printed matter for or related to the COPs, including circulars, press releases, special mailings, etc., in order to acquaint the Issuer's population with the benefits and financial considerations of the COPs;

6. Prepare financial information and schedules necessary to acquaint the Issuer with the benefits of the various forms of financing for or related to the COPs, including interest rates, marketing factors, credit enhancement, and user fee costs;

7. Advise the Issuer on underwriting the COPs for or related to the Project, including but not limited to (1) providing advice as to the structure, timing, terms and other similar matters concerning the COPs; (2) preparation of ratings strategies and presentations related to the issuance being underwriter; (3) preparation for and assistance with investor discussions related to the issuance being underwritten; (4) advice regarding retail order periods and institutional marketing; (5) assistance in preparation of the preliminary and final official statements for the COPs; (6) assistance with the closing of the issuance of the COPs; including negotiation and discussion with respect to all documents, certificates, and opinions needed for such closing; (7) coordination with respect to obtaining CUSIP numbers and registration of the issue of municipal securities with the book-entry only system of the Depository Trust Company; (8) preparation of post-sale reports; (9) providing regular updates of market conditions, recommendations regarding appropriate maturity schedules, call features, registration provisions, paying agency and trusteeship responsibility, or interest rate limitations related to the COPs;

8. Make recommendations as to the exact amount of the COPs to be issued for and related to the Project, maturity schedules, redemption features and provisions, and other related items, in order to formulate the most attractive and appealing investment package to the purchasers of the COPs, which will result in the maximum benefit and minimum net effective interest rate cost to the Issuer;

9. Assist in the credit presentation for rating agencies and insurance companies;

10. Collect, format and prepare information, in cooperating with the Issuer for a Preliminary Official Statement, as appropriate, related contracts or agreements, and certificate proceedings for or related to the Project, all of which shall be appropriately executed and satisfactory to the Issuer;

11. Engage in pre-marketing activities to announce and promote the sale of the COPs related to the Project;

12. Distribute the Preliminary Official Statement to potential investors;

13. Provide for a pricing conference call, during which the related pricing levels for the COPs will be established prior to the offering; and

14. Arrange for the closing and delivery of the COPs.

B. <u>Marketing the Securities</u>

1. The Underwriter will provide information and material as needed to support presentations for rating agencies and/or certificate insurance companies; if requested;

2. The Underwriter will coordinate printing and distribution of the preliminary and final official statements;

3. Together with the Issuer and other appropriate parties, the Underwriter will provide market information on the timing of the sale of the COPs in relation to the market conditions and financing needs;

4. The Underwriter will arrange for distribution of the final official statements in accordance with Section 240.15c2-12 of Title 17 of the Code of Federal Regulations; and

5. The Underwriter will serve as sole managing underwriter of the COPs, which obligation is conditioned upon the execution of a mutually satisfactory certificate purchase agreement and other customary documentation, and coordinate with all parties so as to consummate the sale and delivery of the COPs in a timely manner.

Regulatory Disclosure

Issuer is aware of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Securities and Exchange Commission's adopted rule commonly known as the "Municipal Advisor Rule" (SEC Rule 15Ba1-1 to 15Ba1-8 -"the Rule") and the underwriter exclusion from the definition of "municipal advisor" for a firm serving as an underwriter for a particular issuance of municipal securities. Some of the services that Stifel will be called upon to perform, such as providing advice with respect to the sizing, structure, timing and terms of the COP issuance, are services that are also commonly provided by financial advisory firms.

However, in providing such services for the COPs, the parties understand and agree that Stifel is serving as an underwriter for this transaction and is permitted to give advice and recommendations under the "underwriter exclusion" provision of the Rule. Issuer agrees that Stifel will not be serving as the Issuer's financial advisor or acting as an agent or fiduciary for the Issuer and that the Issuer will be consulting with its own legal, financial and other advisors. This Agreement and relationship shall be either executed, approved or acknowledged by the governing board of Issuer (the "Governing Board").

Disclosures Required by MSRB Rule G-17 Concerning the Role of the Underwriter

1. Municipal Securities Rulemaking Board ("MSRB") Rule G-17 requires an underwriter to deal fairly at all times with both municipal issuers and investors.

2. The underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the Issuer. The underwriter has financial and other interests that differ from those of the issuer.

3. The underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer without regard to its own financial or other interests.

4. The underwriter has a duty to purchase the securities from the issuer at a fair and reasonable price, but must balance that duty with its duty to sell the securities to investors at prices that are fair and reasonable.

5. The underwriter will review the official statement for the securities in accordance with, and as part of, its respective responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction. [1]

Disclosures Concerning the Underwriter Compensation

The underwriter will be compensated by a fee and/or an underwriting discount outlined below and that will be set forth in the certificate purchase agreement to be negotiated and entered into in connection with the issuance of the securities. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the securities. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriter may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

Conflicts of Interest Disclosures

Stifel has not identified any additional potential or actual material conflicts that require disclosure.

Disclosures Relating to Complex Municipal Securities Financing

Since Stifel has not recommended a "complex municipal securities financing" to the Issuer, additional disclosures regarding the financing structure for the Issue are not required under MSRB Rule G-17.

However, if Stifel recommends, or if the Issue is ultimately structured in a manner considered a "complex municipal securities financing" to the Issuer, this letter will be supplemented to provide disclosure of the material financial characteristics of that financing structure as well as the material financial risks of the financing that are known to us and are reasonably foreseeable at that time.

Limitation of Duties

The Issuer acknowledges and agrees that Stifel is not making a commitment to extend credit, make a loan or otherwise fund the Project beyond the obligations contained in a mutually satisfactory certificate purchase agreement. The Issuer acknowledges that the services provided under this Agreement involve professional judgment by Stifel and that the results cannot be, and are not, guaranteed.

As addressed above, among the services that Stifel will perform under this Agreement is assistance in preparation of, and/or review of the preliminary and final official statements for the COPs. We note, however, that under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. Our assistance with respect to, and/or review of the official statement will be solely for purposes of satisfying our obligations as underwriter under the federal securities laws and such assistance and/or review should not be construed by the Issuer as a guarantee of the accuracy or completeness of the information in the official statement. All actions takes and all recommendations made by Stifel in performing the duties under this

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[1] Under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. The review of the official statement by the underwriter is solely for purposes of satisfying the underwriter's obligations under the federal securities laws and such review should not be construed by an issuer as a guarantee of the accuracy or completeness of the information in the official statement.

Agreement will be based on Stifel's best professional judgement with the goal of obtaining the most favorable terms for the Issuer, which is not a guarantee of result.

Expenses

The Issuer, from the COP proceeds, will pay the Underwriter's costs incurred in the performance of this Agreement, including costs of communication and preparation of the official statements, and overhead expenses.

The Issuer, from the COP proceeds or other lawfully available funds, will pay for legal fees, including disclosure counsel; rating agency and credit enhancement fees including all related travel (if any); the cost of appraisal, fiscal consultant, statistical, computer, and graphics services (if any), cost of printing and distribution of the official statements and expense of publication, advertising, and informational meetings; and the costs of fiscal agent or trustee and registrar.

Compensation

The Underwriter agrees to prepare and coordinate all aspects of the sale of the COPs. Stifel will be paid only when the COPs are sold. The fee for Stifel's preparation and coordination of the sale of the COPs shall be $9.50 per $1,000.00 of COPs sold. The underwriting fee is contingent on a successful sale of the COPs and is payable from the proceeds of the COPs.

Term of Agreement

This Agreement is to continue until the Project is financed or until the Governing Board formally abandons the Project, unless previously terminated by mutual written consent of the parties hereto.

This Agreement may be terminated at any time by the Issuer, upon five business days' prior notice to such effect to the Underwriter, or by the Underwriter upon five business days' prior notice to such effect to the Issuer. Any such termination, however, shall not affect the obligations of the Issuer under the Expenses section hereof.

Severability of Provisions

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

Governing Law

This Agreement, and the rights and obligations of the parties hereto, shall be construed, interpreted and enforced pursuant to the laws of the Colorado, and exclusive venue in any and all actions existing under this Agreement shall be laid in the action or proceeding which Issuer or Underwriter may be required to prosecute to enforce its respective rights within this Agreement. The unsuccessful party therein agrees to pay all costs incurred by the prevailing party therein, including reasonable interest and attorney's fees, to be fixed by court, and said costs, interest, and attorneys' fees shall be made a part of the judgment in said action. Prior to the commencement of any litigation concerning this Agreement, the Issuer and the Underwriter agree to first submit any disagreements to mediation. This mediation requirement is intended to reduce the costs of dispute resolution for both parties.

Subcontractors

The Underwriter shall, with the prior written approval of the Issuer, use such subcontractors as are necessary in the fulfillment of this Agreement.

Miscellaneous

Nothing contained herein shall preclude the Underwriter from carrying on its customary and usual business activities. The Underwriter specifically reserves the right, but is not obligated, to bid for and maintain secondary markets on any Issuer outstanding certificates subject to appropriate information barriers. Services provided by the Underwriter in connection with this Agreement shall not limit the Underwriter from providing services for the Issuer in conjunction with other services requested by the Issuer except as limited by rule of law or regulation.

Stifel certifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, are not currently engaged in, or for the duration of this Agreement will not engage in, a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. Stifel understands that "boycott" includes, but is not limited to, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations, but does not include an action made for ordinary business purposes.

In connection with services agreed to herein, it is understood that the Underwriter will render professional services as an independent contractor. Neither the Underwriter nor any of its agents or employees shall be deemed an employee of the Issuer for any purpose.

The Underwriter shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of the Issuer.

The Issuer acknowledges and recognizes Stifel as Underwriter with respect to the municipal securities referenced for purposes of MSRB Rule G-23 and Securities and Exchange Commission Rule 17 CFR (Registration of Municipal Advisors) and acknowledges receipt of the G-17 disclosures included herein. It is our understanding that you have the authority to bind the Issuer by contract with us, and that you are not a party to any conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately.

This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof and supersedes any prior understandings or representations. The Agreement may be amended or modified only by a writing signed by both parties. It is solely for the benefit of the Issuer and Stifel, and no other person.

This Agreement is submitted in duplicate originals. The acceptance of this Agreement by the Issuer will occur upon the return of one original executed by an authorized Issuer representative, and the Issuer hereby represents that the signatory below is so authorized.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Stifel, Nicolaus & Company, Incorporated

By _____

Name: Alan Matlosz_____

Title: _Managing Director_____

Date: _January 28, 2021_____

ACCEPTANCE

Town of Bennett

By _____

Name _____

Title _____

Date _____

Suggested Motion

I move to approve Resolution No. 864-21 – A Resolution Approving an Underwriting Engagement Agreement with Stifel, Nicolaus & Company authorizing the Mayor to sign the Agreement.

Suggested Motion

I move to approve and direct Staff to pursue debt issuance option number 2 seeking a 25- year COP issuance for $3.6 million dollars.