

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 60-R-2022**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO,
AUTHORIZING NEGOTIATIONS FOR THE ACQUISITION OF CERTAIN
INTERESTS IN REAL PROPERTY AND IMPROVEMENTS FOR PUBLIC
WASTEWATER UTILITY PURPOSES AND AUTHORIZING EMINENT DOMAIN
PROCEEDINGS TO ACQUIRE THE SAME IF AND AS NECESSARY**

WHEREAS, the Town of Mead, Colorado (“Town”) possesses the power of eminent domain pursuant to the provisions of Colorado law including but not limited to Sections 38-1-202(1)(e) and 38-6-101 of the Colorado Revised Statutes (“C.R.S.”); and

WHEREAS, C.R.S. § 38-6-101 authorizes the Town to exercise its eminent domain powers after passage of a resolution or ordinance to acquire or establish any public work or public improvement; and

WHEREAS, C.R.S. § 31-35-402(1)(a) authorizes the Town to exercise its eminent domain powers to acquire by gift, purchase, lease, or exercise of the right of eminent domain sewerage facilities along with lands, easements, and rights in land in connection therewith; and

WHEREAS, in 1993, the Town adopted Ordinance No. 234, codified in Chapter 13, Article I of the Town’s Municipal Code, to establish a municipal wastewater utility for the purpose of the management, maintenance, care and operation of the wastewater collection and treatment facilities of the Town; and

WHEREAS, pursuant to Ordinance No. 234, the Town has the power to provide for the prudent, efficient, and economical management and protection of its wastewater utility; and

WHEREAS, WCR 34 & HWY 25-220, LLC, a Colorado limited liability company or its successor or assign (“Owner”), owns a lift station and related improvements and facilities generally located in a portion of LOT 5, BLOCK 1, RATERINK MIXED-USE SUBDIVISION FINAL PLAT (north of Weld County Road 34) (the “Lift Station”); and

WHEREAS, the Lift Station is a wastewater improvement connected to the Town’s wastewater utility that was designed and intended to serve multiple parcels of property within the Town and was constructed pursuant to Subdivision Improvement Agreements dated September 30, 2019 and recorded on November 19, 2022 at Reception No. 4542530 (the “Owner SIA”) and Reception No. 4542533 of the Weld County real property records; and

WHEREAS, pursuant to the terms of the Owner SIA, the Owner is required to transfer the ownership and operation of the Lift Station to a Title 32 metropolitan district having the property on which the Lift Station is located within its service area boundaries, a commercial property owners association formed by the Owner (“Commercial POA”), or another entity acceptable to the Town; and

WHEREAS, as of the date of this Resolution the Owner has failed to transfer the Lift Station to a Title 32 metropolitan district, a Commercial POA or another entity acceptable to the Town; and

WHEREAS, the Owner is prohibiting, delaying and/or unreasonably or improperly conditioning the ability of other parcels of property from connecting to and utilizing the Lift Station to obtain wastewater service; and

WHEREAS, the failure of the Owner to meet its obligations under the Owner SIA may interfere with the Town's ability to prudently, efficiently, and economically manage its wastewater utility and provide wastewater utility services to properties within the Town; and

WHEREAS, the failure of the Owner to meet its obligations under Owner SIA may not be timely, fully or properly remedied by the payment of damages; and

WHEREAS, the Board of Trustees ("Board") has therefore determined that it is necessary for the Town to acquire fee simple title to the Lift Station improvements and facilities and the associated real property interests (collectively, the "Lift Station Property") for public uses and purposes, including the prudent, efficient, and economical management of its wastewater utility and provision of wastewater services to those portions of the Town able to be served by the Lift Station; and

WHEREAS, the Board recognizes that the taking of private property for a public purpose is a serious action that should be invoked only after careful consideration of its effect on the rights of affected property owners; and

WHEREAS, the Board finds and determines that acquisition of the Lift Station Property is necessary for public uses and public purposes and for the continued health, safety, and welfare of the residents and taxpayers of the Town.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Mead, Weld County, Colorado, that:

Section 1. The foregoing recitals and findings are incorporated herein as findings and conclusions of the Board of Trustees.

Section 2. Delegation of Authority for Negotiations. The Town's special eminent domain counsel, in coordination with the Town Attorney and the Town Manager (together, the "Negotiators"), shall be authorized to conduct good faith negotiations with the Owner of the Lift Station in accordance with applicable law and to make offers of just compensation to the Owner for the voluntary acquisition of clear title to the Lift Station Property subject only to those title encumbrances that the Negotiators determine are consistent and will not interfere with the Town's intended use of the Lift Station and Lift Station Property. In the event that good faith negotiations are successful, the Town Manager shall be authorized to schedule and conduct a closing with the Owner and take such other actions as are necessary to effect the transfer of the Lift Station and Lift Station Property from the Owner to the Town.

Section 3. Compensation. If compensation to be paid for the Lift Station and Lift Station Property cannot be agreed upon by the interested parties, or in case the Owner is incapable of consenting or incapable of providing clear title to the Lift Station Property, then the Town's special eminent domain counsel, in coordination with the Town Attorney, shall be authorized to institute and prosecute to conclusion such proceedings as are available under Article 1 or Article 6 of Title 38, C.R.S., through the exercise of the power of eminent domain. Through the eminent domain

proceedings, the Town's special eminent domain counsel and the Town Attorney may seek to acquire clear title to the Lift Station Property, subject only to those title encumbrances that the Negotiators find are consistent and will not interfere with the Town's intended use of the Lift Station and Lift Station Property. In the event that acquisition by eminent domain is deemed necessary, the Town's special eminent domain counsel and the Town Attorney shall be authorized to request immediate possession of the Lift Station and Lift Station Property in furtherance of the purpose of this Resolution.

Section 4. The Town Manager shall be authorized to employ all necessary persons for the acquisition of the Lift Station and Lift Station Property, whether through negotiation or through the exercise of the power of eminent domain, including special eminent domain counsel, appraisers, surveyors, engineers, and other experts as deemed necessary.

Section 5. The Town Manager, or her designee, shall have the authority to amend or modify the legal description of the Lift Station Property, the nature of the property interests to be acquired, and may delete or add parcels, improvements or facilities, or portions thereof, in whole or in part, as deemed necessary by the Town Manager, or her designee, in order to ensure that the Lift Station Property to be acquired by the Town is adequate to support the Town's intended ownership, use and operation of the Lift Station.

Section 6. The Town Manager shall be authorized to execute and the Town Clerk to attest any document necessary for the acquisition of the Lift Station and Lift Station Property. Following execution, the Town Clerk shall cause a copy of any deed(s) related to the Lift Station Property to be recorded in the real property records of Weld County, Colorado. If acquired by condemnation, the Town Attorney shall cause the final rule and order to be recorded in the real property records of Weld County, Colorado.

Section 7. Effective Date. This resolution shall be effective immediately upon adoption.

Section 8. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 9. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 29TH DAY OF AUGUST, 2022.

ATTEST:

By: 

Mary E. Strutt, MMC



TOWN OF MEAD

By: 

Colleen G. Whitlow, Mayor